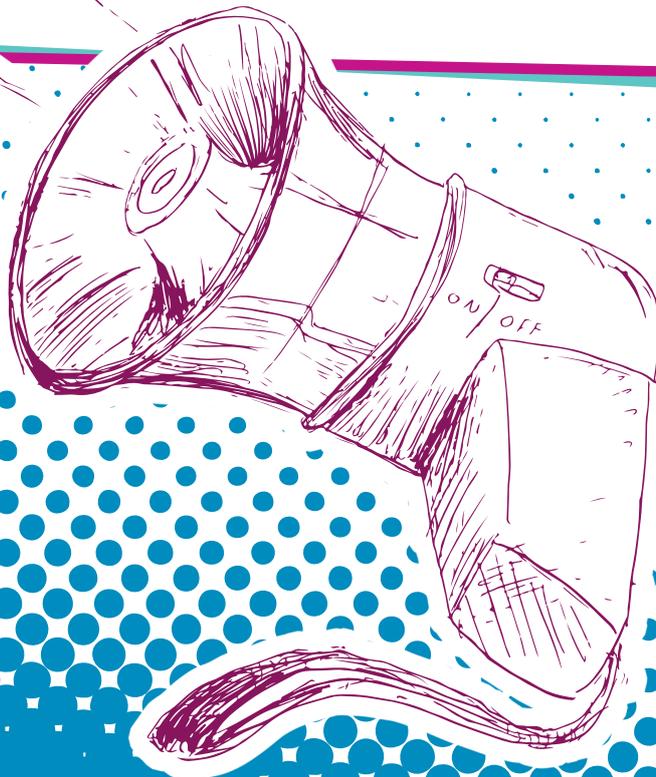


mental welfare
commission for scotland

Children's rights report 2020-23



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

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Foreword - Julie Paterson, chief executive



This is the Commission's second Children's Rights Report since we were made an authority under the Children and Young People (Scotland) Act 2014, with duties to report every three years on the work we have undertaken to further the rights of children and young people in Scotland.

In this report we describe the broad ranging nature of our work to promote children's rights throughout 2020-23 which included the Covid-19 pandemic and the activities of the Scottish Mental Health Law Review of mental health and incapacity legislation in Scotland. Over this period we have continued to work with and support other organisations to improve the experience and care and treatment of children and young people under the age of 18 living with mental illness, learning disability or related conditions.

At times the work of the Commission may be focussed on groups or even whole populations of people. At other times, our work is very much focussed on the individual and their experience of care and treatment. This flexibility of perspective, gained from the work that we do and from listening to the experiences of children and young people and their families, provides the Commission with insights into the issues that affect the rights of children and young people living with mental illness, learning disabilities and related conditions in Scotland today.

We are very grateful to the Dumfries and Galloway Mental Health Youth Forum, a group of young people who have had experience of mental health services in Scotland, for their support in compiling this report.

Julie Paterson
Chief executive
Mental Welfare Commission for Scotland

Executive summary

1. This report describes the activities of the Mental Welfare Commission (“the Commission”) in furthering the rights of children and young people under the age of 18 in Scotland between the 1 April 2020 and the 31 March 2023.
2. In March 2020, Scotland was affected by the Covid-19 pandemic which sadly claimed the lives of many people across the country and resulted in substantial changes to the everyday lives of children and adults due to the introduction of lockdown measures. Legislation was introduced to amend the Adults with Incapacity (Scotland) Act 2000 (“AWIA”) and the Mental Health (Care and Treatment) (Scotland) Act 2003 (“MHA”) during this period of global crisis. We became acutely aware that these measures, along with emergency changes in the way services were having to work could have a significant impact on the way in which professionals and services cared for and worked with children and adults with mental illness, learning disability and related conditions. We highlighted that any reduction in safeguards should be used only if absolutely necessary, and for as short a time as possible. We altered our methods of monitoring data relating to legislation to accommodate the emergency laws and made sure that there was scrutiny of any temporary powers that reduced the safeguards for those detained under the MHA.

During this early period the Commission was involved in advising the Scottish Government on the implications of its proposed emergency legislation. A scrutiny group of key mental health and learning disability stakeholders was set up to advise on the use of emergency mental health and incapacity legislation. The intention was to ensure that emergency legislation was only used where necessary and vital safeguards were upheld.

3. Throughout the Covid-19 lockdown period we published a series of advice notes aimed at guiding professionals on the use of mental health legislation during this exceptional period of time.
4. The Scottish Mental Health Law Review (SMHLR) undertook the first major review of mental health and incapacity legislation in Scotland for over 20 years during 2020-23. The SMHLR team were tasked with reviewing mental health and incapacity legislation. A key focus of this work looked at how mental health legislation responds to the needs of children and young people. We made a number of contributions to the SMHLR activity relating to children and young people and submitted a comprehensive response to their recommendations.
5. The Commission has a Children and Young People’s Group (CYP group) that is a small team that helps to support and structure Commission activity and ensure we meet our legal duties in relation to children and young people. The CYP group helps to prepare any formal responses by the Commission that relate to matters affecting children and this has included the SMHLR response¹², Scottish Government’s new mental health strategy³ and to two consultations relating specifically to children and young people; one in relation to physical intervention in schools and the other in relation to the Children (Care and Justice) (Scotland) Bill. The CYP group also supports the skills and experiences of colleagues within the Commission and organises talks and resource materials to support daily practice.

1 [MHA-ReviewResponse_May2020.pdf \(mwscot.org.uk\)](https://www.mwscot.org.uk/MHA-ReviewResponse_May2020.pdf)

2 [SMHLR-Response_May2022.pdf \(mwscot.org.uk\)](https://www.mwscot.org.uk/SMHLR-Response_May2022.pdf)

3 [MWC_MentalHealthStrategy_ConsultationResponse_Sep2022_0.pdf \(mwscot.org.uk\)](https://www.mwscot.org.uk/MWC_MentalHealthStrategy_ConsultationResponse_Sep2022_0.pdf)

6. We use a range of measures to seek children's and young people's views about matters that affect them. We do this by meeting with them directly during our visits and with their parents and carers. Between April 2020 and March 2023 we met with 27 children and young people face to face as part of our local visiting activities to hospital wards and met with 11 of their parents or carers. We also visited eight young people in the community who were aged 16 or 17 and were placed under a guardianship order as part of AWIA. In September 2020 we published our *Eating Disorder* themed visit report⁴⁵ during which we met with 22 young people who told us about their experience of care and treatment for their eating disorder.

Our participation and engagement officer for relatives/carers engages with Young Carer groups as part of their regular activity and between April 2020 and March 2023 met with more than 80 parents or carers of young people with mental health difficulties and gave presentations to four specific parent and carer groups.

We have made progress in exploring ways to best engage with children and young people who have experience of mental health services, including inpatient care and treatment, so that we can gather their views of the work of the Commission. We have made links with a small number of Children's Rights Officers in Health Board areas and for this report worked with members of the Dumfries and Galloway Youth Mental Health Forum who took part in a consultation and gave us feedback on an early draft of this report with suggestions on how to improve it. Many members also designed and developed artwork and graphics to accompany the report to support its visual appeal and ensure that involvement of young people was integral to its content and structure.

7. We revisited *The Right to Advocacy*⁶ report that we published in April 2018 and published a follow up report in 2023⁷. This report found that, although more areas around the country now have specialist mental health advocacy for children and young people, there were still some gaps. We recommended that all areas in Scotland should have plans to provide specialist mental health advocacy services for children and young people by 31 March 2024.
8. To support the right of children and young people to access information, the Commission has a telephone advice line that is available to everyone, including children and young people, their family and carers, and also professionals who work with children and young people. We undertook a review of the advice line in 2022 and wrote to agencies across Scotland who support young people with mental health issues or learning disability to publicise the advice line to them.

Between April 2020 and March 2023, we gave advice on 409 calls that related to the care and treatment of children and young people under the age of 18 via our telephone advice line.

9. We try to ensure that children and young people have access to the high-quality health care that they need. A key activity of the Commission is to visit individuals in hospitals or in the community to find out whether they are receiving appropriate care and treatment and to ensure that their rights are being respected. Between April 2020 and March 2023, we made nine visits to specialist child and specialist adolescent mental health units in Scotland and reviewed the care of 39 children and young people as part of these visits.

4 [EatingDisorders_ThemedVisitReport_03Sept2020_0.pdf \(mwscot.org.uk\)](#)

5 [MappingOfEatingDisorderServicesAcrossScotland_Sep2020.pdf \(mwscot.org.uk\)](#)

6 <https://www.mwscot.org.uk/news/right-advocacy-review-advocacy-planning-across-scotland>

7 https://www.mwscot.org.uk/sites/default/files/2023-04/TheRightToAdvocacy2022_April2023.pdf

10. Where we have concerns about the care and treatment of a young person, we make initial enquiries. When these initial enquiries do not provide us with the information that we need, or when we have ongoing concerns about the young person's care and treatment, we may further make more formal inquiries into the care of the individual. We call these active interventions. These cases can arise from our visits, from information provided to us on the telephone advice line or from data provided as part of our monitoring activities. Between April 2020 and March 2023 we undertook 23 active interventions relating to a child or young person under the age of 18.
11. A key way in which we support children's and young people's rights, and in shaping the future of mental health services, is undertaking the monitoring of admissions of children and young people, under the age of 18, to mental health wards in Scotland that have not been designed to meet their needs. We monitor the admissions of children and young people to non-specialist wards and gather information about the care and treatment they receive which reflects their rights as children. Each year we publish a report of our findings⁸ and continue to advocate for improvements in services and the development of specialist inpatient facilities.
12. Going forward we are keen to continue to develop our links with children and young people who have experience of mental health services in Scotland and establish ways to be able to regularly listen to their views. We also want to reflect on how we communicate with children and young people more generally as part of our everyday activities.

We also wish to consolidate our links with other children's agencies to ensure that we can enrich and contextualise our knowledge and experience as it develops and be in a position to be able to contribute to the wider discussions about how to realise children's rights in Scotland.

We are keen to support all Commission staff continue to develop their understanding about children's rights and gain in confidence in integrating our child specific legal duties with the more general work of the Commission. This is particularly important with the future incorporation of United Nations Convention for the Rights of the Child (UNCRC) into Scottish legislation. UNCRC is the international human rights convention for children under the age of 18 that aims to protect and promote the needs of children in a holistic and comprehensive way. Future changes to mental health legislation will require staff in public bodies to be more confident in their awareness of and use of the children's rights, both in terms of their everyday practice and also in the use of mental health legislation.

8 [ChildrenYoungPeople-MonitoringReport2023.pdf \(mwcscot.org.uk\)](#)

We made nine visits to specialist child and adolescent mental health units and reviewed the care of 39 children and young people.

We met with 27 children and young people face to face to ask about their care and met with 11 of their parents and carers.

We gave advice on the care and treatment of 409 children and young people under the age of 18 as part of our telephone advice line.

We undertook 23 active interventions where there were concerns about the care of children or young people under the age of 18.

Our engagement and participation officer (carer) met with over 80 parents and carers of children and young people with mental health difficulties.

<p>1</p>  <p>DEFINITION OF A CHILD</p>	<p>2</p>  <p>NO DISCRIMINATION</p>	<p>3</p>  <p>BEST INTERESTS OF THE CHILD</p>	<p>4</p>  <p>MAKING RIGHTS REAL</p>	<p>5</p>  <p>FAMILY GUIDANCE AS CHILDREN DEVELOP</p>	<p>6</p>  <p>LIFE, SURVIVAL AND DEVELOPMENT</p>	<p>7</p>  <p>NAME AND NATIONALITY</p>
<p>8</p>  <p>IDENTITY</p>	<p>9</p>  <p>KEEPING FAMILIES TOGETHER</p>	<p>10</p>  <p>CONTACT WITH PARENTS ACROSS COUNTRIES</p>	<p>11</p>  <p>PROTECTION FROM KIDNAPPING</p>	<p>12</p>  <p>RESPECT FOR CHILDREN'S VIEWS</p>	<p>13</p>  <p>SHARING THOUGHTS FREELY</p>	<p>14</p>  <p>FREEDOM OF THOUGHT AND RELIGION</p>
<p>15</p>  <p>SETTING UP OR JOINING GROUPS</p>	<p>16</p>  <p>PROTECTION OF PRIVACY</p>	<p>17</p>  <p>ACCESS TO INFORMATION</p>	<p>18</p>  <p>RESPONSIBILITY OF PARENTS</p>	<p>19</p>  <p>PROTECTION FROM VIOLENCE</p>	<p>20</p>  <p>CHILDREN WITHOUT FAMILIES</p>	<p>21</p>  <p>CHILDREN WHO ARE ADOPTED</p>
<p>22</p>  <p>REFUGEE CHILDREN</p>	<p>23</p>  <p>CHILDREN WITH DISABILITIES</p>	<p>24</p>  <p>HEALTH, WATER, FOOD, ENVIRONMENT</p>	<p>25</p>  <p>REVIEW OF A CHILD'S PLACEMENT</p>	<p>26</p>  <p>SOCIAL AND ECONOMIC HELP</p>	<p>27</p>  <p>FOOD, CLOTHING, A SAFE HOME</p>	<p>28</p>  <p>ACCESS TO EDUCATION</p>
<p>29</p>  <p>AIMS OF EDUCATION</p>	<p>30</p>  <p>MINORITY CULTURE, LANGUAGE AND RELIGION</p>	<p>31</p>  <p>REST, PLAY, CULTURE, ARTS</p>	<p>32</p>  <p>PROTECTION FROM HARMFUL WORK</p>	<p>33</p>  <p>PROTECTION FROM HARMFUL DRUGS</p>	<p>34</p>  <p>PROTECTION FROM SEXUAL ABUSE</p>	<p>35</p>  <p>PREVENTION OF SALE AND TRAFFICKING</p>
<p>36</p>  <p>PROTECTION FROM EXPLOITATION</p>	<p>37</p>  <p>CHILDREN IN DETENTION</p>	<p>38</p>  <p>PROTECTION IN WAR</p>	<p>39</p>  <p>RECOVERY AND REINTEGRATION</p>	<p>40</p>  <p>CHILDREN WHO BREAK THE LAW</p>	<p>41</p>  <p>BEST LAW FOR CHILDREN APPLIES</p>	<p>42</p>  <p>EVERYONE MUST KNOW CHILDREN'S RIGHTS</p>
<p>43-54</p>  <p>HOW THE CONVENTION WORKS</p>	<h1>CONVENTION ON THE RIGHTS OF THE CHILD</h1>					

Introduction

This reports relates to the period between the 1st April 2020 and the 31st March 2023 and describes the activities of the Mental Welfare Commission (“the Commission”) in furthering the rights of children and young people under the age of 18 in Scotland.

Through our work with health and social care services in Scotland who deliver care and treatment to children and young people and their families we try to ensure that children’s rights are protected and promoted.

Our role in promoting and protecting the rights of children and young people

The Children and Young People (Scotland) Act 2014 (‘the 2014 Act’) placed a duty on the Commission and a range of other public authorities to take steps to better secure the human rights of children as part of their existing work and report on this activity every three years.

The UNCRC is an international human rights treaty, which sets out the rights that all children should have and be able to enjoy up to the age of 18. The 2014 Act also named the Commission as a Corporate Parent, which requires that we also promote the rights and wellbeing of children who are care experienced or those who are care leavers, up to the age of 26. We last reported on our plans for our Corporate Parent duties in 2021⁹ and will review these and report on future plans in 2024.

About the Mental Welfare Commission

The Mental Welfare Commission (‘the Commission’) is an independent organisation that was originally set up by law in 1960. We have duties that relate to the use and practice of mental health and incapacity law in Scotland and our role is to safeguard the rights and welfare of people of all ages with a mental illness, learning disability or related conditions. We particularly are concerned with those who are more vulnerable and less able to safeguard their own interests and make decisions about their treatment. This includes children.

Because of the nature of mental health difficulties sometimes individuals can have restrictions placed on them in order to receive mental health care and treatment. The main laws used in this case are the Mental Health (Care and Treatment) (Scotland) Act 2003 (the mental health act or “MHA”) and the Adults with Incapacity Act 2000 (the “AWIA”). The MHA applies to all ages of the population including children and young people and the AWIA can be used for people 16 years and older.

When these laws are used, we make sure that the compulsory measures taken are legal and ethical and in line with the principles that guide the use of mental health and incapacity law. In order to do this we draw on our experience of health and social care and the experience of service users and carers.

⁹ https://www.mwscot.org.uk/sites/default/files/2022-03/CorporateParentingActionPlan_2021-2024.pdf

We carry out our duties by focusing on five main areas of work.

1. Influencing and empowering

At times when mistakes are made in services, we draw attention to these and ask professionals to learn from them and improve the care and treatment for individuals. At other times, we use our unique overview of mental health and learning disability services to help Scottish Ministers and service managers shape policy. In this way, we aim to help develop services that safeguard rights and improve care and treatment for people with a mental illness, learning disability and related conditions.

2. Visiting individuals

We visit people experiencing mental health issues who are in hospital, at home or in any other setting where they are receiving care and treatment. We publish reports on our visits so that services can learn from our findings and improve care.

3. Monitoring the law

We monitor the MHA and the welfare parts of the AWIA. We regularly analyse and report on the use of the MHA and AWIA across Scotland and identify trends in how these acts are being used.

As part of our MHA monitoring role, we monitor the number of children and young people admitted to non-specialist wards in hospitals in Scotland and the features of the care they have received; we report on these findings in a separate report every year.

4. Investigations and casework

When we believe that an individual may not be receiving the right care and treatment, we may make enquiries into their care or we may undertake an in-depth investigation. We are particularly interested in cases where there may be learning opportunities for professionals and services across the country to try to avoid the same mistakes happening again. We report on our findings from full investigations.

5. Information and advice

We give advice about best practice in the use of the MHA and AWIA. Our website contains information for individuals, patients and professionals and we can also signpost users to other sources of advice. We provide a telephone advice line, available within office hours on weekdays, which is free of charge; advice is available for individuals or professionals and if we cannot help we will try and signpost to others who can.

How this report is structured

The UNCRC is made up of 54 children's rights and in writing and constructing this report we have followed Scottish Government guidance¹⁰ to make reporting simpler by clustering together groups of rights and then describing our activity against these clusters.

The eight clusters of rights are as follows:

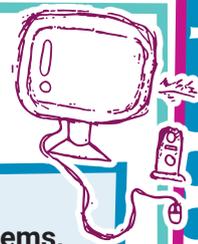
- General measures of implementation
- General principles
- Civil rights and freedoms
- Violence against children
- Family environment and alternative care
- Disability, basic health and welfare
- Education, leisure and cultural activities
- Special protection measures

It is important to keep in mind, however, that many of the Commission's activities serve to protect the rights of children across several of these clusters at any one time. For example, when we visit children and young people in a hospital ward that specifically looks after children and young people with mental health difficulties, we speak to the children and young people and seek their views about their care (Article 12); we look into their care and treatment to see that it is legal and supports their rights (Articles 6, 19, 24 and 37); we may review any difficulties they are experiences with access to education (Article 28) or we may make recommendations about their opportunities to access recreational facilities (Article 31). Despite the recommended clusters for writing this report not always mapping well onto the nature of our work, we have tried to limit any duplication and repetition of our activity as much as possible to help the flow and readability of this document.



Produced by Alix, Dumfries and Galloway 2021

1. General measures of implementation



In this section, we look at the ways the Commission has supported the overarching systems, structures and resources that are in place in Scotland that respect and realise children's rights. Article 4 of the UNCRC is concerned with the protection of children's rights and seeks to ensure that the UNCRC rights are implemented through laws and other measures to the maximum extent of resources available within any country. The other measures include non-legal measures such as national strategies and action plans as well as resource allocation and monitoring, the development and collection of data on children's and young people's lives, and collaboration with all sectors including children and young people themselves.

1.1 In March 2020, like many countries around the world, Scotland was affected by the Covid-19 pandemic which claimed many lives across the population. Public bodies introduced lockdown measures to try and minimise the deaths and spread of disease caused by the pandemic and these measures had major effects on the everyday lives of people living in Scotland including children. Restrictions were introduced on freedom of movement, schools were closed and many people were not able to work. Access to and provision of health and social care was heavily affected during this time and emergency legislation was introduced to underpin some of these alterations in practice.

In late March 2020 the Coronavirus (Scotland) Bill was introduced to the Scottish Parliament and became an Act on 6 April 2020. It contained measures that would affect vulnerable individuals 16 years and above who lacked capacity and were treated under the Adults with Incapacity Act ("AWIA"). We became acutely aware that these measures, along with emergency changes to the Mental Health Act ("MHA") that had been introduced 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, including children, with mental illness, learning disability, dementia and related conditions.

At the end of 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. At the same time we made a commitment to ensure that we would change our methods of monitoring data related to the Mental Health Act to accommodate the emergency laws and capture their use through the pandemic. This was to try and make sure there was scrutiny of any temporary powers that would reduce the safeguards for those detained under the MHA. During this early period the Commission was involved in advising the Scottish Government on the implications of its proposed emergency legislation. 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 existing MHA forms and developed advice on how these should be completed during the lockdown period when face to face interviews were not always possible. In consultation with the Scottish Government we set up a scrutiny group of key mental health and learning disability stakeholders who would be able to scrutinise the use of emergency mental health and incapacity legislation. The intention was to ensure such emergency 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.

1.2 Giving professional advice on the use of the law to care for and treat people with mental ill health or incapacity is one of the Commission's key roles. During the lockdown period when normal practice in providing care to children and adults had to substantially alter and the way in which services were run had to radically change, the Commission published a series of advice notes aimed at guiding professionals on the use of mental health legislation during this exceptional period. One example of a change in practice during lockdown was the limited ability to undertake face to face interviews or examinations which until then had been an essential component in the use of compulsory measures. Another included how to approach Covid vaccination for individuals who lacked capacity to consent to the vaccine.

Our aim throughout was to ensure that people who needed and relied upon mental health legislation to access their care could still receive it. At the same time it was important to minimise any reductions in the safeguards in law that exist to protect people's rights. As practice was having to change due to the lockdown measures, we viewed it as essential that practice should remain informed by the principles that legislation describes and which exist to guide any use of mental health compulsory measures.

1.3 Over the timescale of this report a second key area of activity for the Commission has been to proactively support and review the work of the Scottish Mental Health Act Law Review (SMHLR). The SMHLR team were tasked with undertaking the first major review of mental health and incapacity legislation in Scotland for over 20 years and to decide whether changes were needed to ensure that mental health legislation was working effectively and efficiently and was upholding individuals' human rights.

An important focus for the Review was how mental health legislation should be used to support the rights of children with mental health difficulties and as part of its work the team reflected on how present day mental health legislation is compatible with UNCRC.

The Commission was active in responding to the Review's activity with attendance at consultation events, giving evidence to various subgroups (including the young people's subgroup) and submitting comprehensive responses both to the first phase of consultation in May 2020¹¹ and to the final consultation that took place in 2022¹². In our responses we highlighted concerns around:

- authority for treatment of children who are unable to consent to treatment on their own behalf; and
- named person provisions with the automatic assigning of a named person role for a young person under the age of 16, irrespective of whether that young person has capacity to make this decision for themselves.

The lack of community services for some young people and the impact of this on available choices for their care and treatment was also raised as part of our response. The SMLHR have now published their final report¹³ and work to consider their findings and implementation of their recommendations continues in the short, medium and longer term.

11 <https://www.mwscot.org.uk/news/mental-health-act-review-mental-welfare-commission-response>

12 [SMHLR-Response_May2022.pdf \(mwscot.org.uk\) \(Chapter 9\)](#)

13 <https://webarchive.nrsotland.gov.uk/20230327160310/https://www.mentalhealthlawreview.scot/>

1.4 A key activity in the regular work of the Commission each year is to monitor the use of the MHA and parts of the AWIA. This work is important because it gives insight into how the laws are being actually used in practice which can highlight areas that might be a cause for concern or prompt questions to be asked about whether the legislation is working as well as it could.

Prior to the Covid-19 pandemic we had reported on the significant rise in the use of the MHA to compulsorily detain young people (especially young men aged 16-17 years) in hospital for up to 72 hours¹⁴. In the 2018-19 Mental Health Act Monitoring report we proposed to undertake a further piece of work to exploring some of the characteristics of these detentions and this work was published in October 2020¹⁵.

The report made a number of recommendations including the need to better understand the reasons behind the increase in the use of compulsory measures for young people. As part of our work in this area we presented our findings to the lead clinicians group of the Child and Adolescent Mental Health Services across Scotland to share our findings and discuss the experience of services and used this information to inform our work and our feedback to the SMHLR process.

1.5 One way in which we have tried to help promote and protect children's rights as part of our everyday work is to have internal structures and processes that reflect our duties towards children. The Commission has a Children and Young People's group which is a small team of people from nursing, social work and medical backgrounds who, together with their other roles in the organisation, keep a particular focus on the specific elements of the Commission's work that relate to children and young people. The group has evolved to try and ensure that the whole organisation works together to meet the legal duties outlined in the 2014 Act when the Commission was given duties to promote the rights of children as part of its work in Scotland. The group considers activity across the Commission and tries to ensure that children's rights are considered and promoted as part of Commission decision making and activity. Members of the Commission's Engagement and Participation team form part of the Children and Young People's group which ensures that the voice of service users and their families and carers are embedded within the group's activity.

1.6 The Children and Young People's group helps to prepare any formal responses by the Commission that relate to matters affecting children during consultation exercises. In addition to the Commission's response to SMHLR¹⁶, over the timescale of this report the Commission has also responded to the consultation relating to Scottish Government's new mental health strategy¹⁷ and to two consultations relating specifically to children and young people. One related to the use of physical intervention in schools and the other in relation to the Children Care (Care and Justice) (Scotland) Bill.

14 <https://www.mwscot.org.uk/publications?type=44>

15 https://www.mwscot.org.uk/sites/default/files/2020-10/YoungPeopleDetainedUnderMHA_October2020.pdf

16 [SMHLR-Response_May2022.pdf \(mwscot.org.uk\)](#)

17 [MWC_MentalHealthStrategy_ConsultationResponse_Sep2022_0.pdf \(mwscot.org.uk\)](#)

1.7 The Children and Young People's group also works to maintain and develop the skills and experience of those working at the Commission in upholding children's rights. To support Commission staff, the Children and Young People's group responds to their requests for advice regarding the care and treatment of children and young people. The group has also developed question and answers to common questions received via our telephone advice line or through our everyday work. This suite of questions is reviewed on a cyclical basis and is responsive to the nature of the enquiries we receive and acts as a resource to promote and maintain a knowledge base in the Commission that relates to children's rights. Over the past twelve months we have expanded these question and answer (Q&A) resources to frequently asked questions available to staff. The Commission has a regular monthly continuous professional development (CPD) meeting for staff aimed at promoting knowledge and awareness of matters relating to our work. Examples of topics relating to children and young people have included a discussion around the role of adverse childhood events (ACEs) in health, and training regarding the Commission's corporate parenting duties given to Commission staff in August 2020 and to our Board in March 2023.

1.8 Another key element of work undertaken by the members of the Children and Young People's group relates to information sharing and collaboration with other children's agencies and services, achieved through attendance at key working groups. This activity serves to both develop and maintain the knowledge and understanding of the group's members regarding policy and strategy in Scotland and also acts as a way of influencing thinking and decision-making relating to children and young people. Examples of such activities include the group's involvement in the Collaborative Corporate Parenting Network, CAMHS Lead Clinicians, Royal College of Psychiatrists in Scotland Child and Adolescent Faculty Group and the CAMHS Nursing Forum. The Commission also participates in sharing information meetings with Health Improvement Scotland (HIS) and the Care Inspectorate (CI) on a regular basis. This is an important way in which any concerns or issues that relate to services for children and young people, which have arisen during our work, may be shared with these key agencies who can support, raise awareness, engage in monitoring or take action when necessary and appropriate.

2. General principles



In this section, we describe the work that the Commission has been doing in relation to the general principles of the UNCRC. These general principles operate like a lens through which the Articles of the UNCRC should be interpreted and achieved and they reflect its four guiding principles.

- **Non-discrimination** (Article 2) Children should not be discriminated against.
- **Best interests of the child** (Article 3) Every decision and action must be in a child's best interests.
- **Survival and development** (Article 6) Every child has the right to life and to develop to their full potential.
- **Respect for the views of the child** (Article 12). Every child has a right to express views on all matters that affect them and due weight should be given to these views depending on the age and maturity of the child.

Like other public bodies the Commission has a number of duties to eliminate unlawful discrimination under the Equalities Act 2010 and this includes discrimination against children and young people. In this section we outline the range of measures we use to ensure that children's and young people's views are sought, listened to and respected, that decisions and actions are made in their best interests and that their right to life and developing to their full potential is promoted and supported.

2.1 The Mental Welfare Commission for Scotland's core purpose is to protect and promote the human rights of people including children with mental illness, learning disabilities, dementia and related conditions. Promoting equality and diversity is central to our work. We are committed to both the principles and the practice of equality and diversity and need to be sure that what we are accessible to the full range of people including children. We see addressing our equality duties as part of a wider strategy which puts equality and human rights at the centre of our service provision and employment.

Under the Equality Act 2010 and its regulations, we have a number of duties to eliminate unlawful discrimination or conduct prohibited by law¹⁸ and have responsibilities to report on these legal duties on a regular basis. The Commission has an equalities group which oversees these duties and regularly publishes documents which outline our work towards eliminating discrimination in our activities on a regular basis¹⁹. The Commission's Board has overall responsibility for ensuring we meet our public sector duties in relation to equality and has an advisory committee that was expanded in 2018 to include representatives from LGBT groups and black and minority ethnic organisations. The Commission's executive leadership team (ELT) has a responsibility to ensure that equality and diversity is integral to all that we do.

We regularly collect information about the protected characteristics including the age of the people we visit and we analyse our local and themed visits on an annual basis to review trends and take action to eradicate any identified discriminatory trends; in this way, we attempt to tackle discrimination and to advance equality of opportunity. We also continue to analyse MHA and AWIA legislation in relation to age and gender and report on these findings in our yearly monitoring reports.

¹⁸ Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2015, Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 set out duties on public bodies including the Commission.

¹⁹ <https://www.mwscot.org.uk/search?keys=equality+outcomes+&op=submit>

2.2 The principle of the best interests of the child informs our work and everyday practice. A key principle of the MHA is that any professional using the MHA must do so in a way that 'best secures the welfare of the child'²⁰ and just like the UNCRC a child is defined in the MHA as anyone under the age of 18 years. This principle forms a key element of any guidance we give relating to care and treatment and the use of mental health legislation for children and young people under the age of 18. Examples of this can be seen in the good practice guidance that the Commission publishes and reflects our approach to any enquiries we might make about a young person's care or treatment or any advice we might give through our visits, investigations or telephone advice line.

2.3 We use a range of measures to seek children's and young people's views about matters that affect them (Article 12) by meeting with them directly during our visits and with their parents and carers. Between April 2020 and March 2023 we met with 27 children and young people face to face as part of our visiting activities to hospital wards and met with 11 of their parents or carers. We also visited eight young people in the community who were aged 16 or 17 and who were placed under guardianship. The purpose of these visits is to review the young person's care and ensure that the principles of the AWIA are being followed in decision-making.

2.4 One key way in which the views of children and young people can be sought and listened to is through specialist independent advocacy. Advocacy workers are individuals trained to support and promote the views of individuals about issues that affect them, and in situations where professionals make decisions about matters that will affect their lives. Specialist independent advocacy workers have additional training to ensure they are fully informed on the particular rights and needs of children and young people.

The MHA states that everyone with a mental illness has a right to be supported by an advocacy worker, whether they are detained under the MHA or not. Local authorities and health boards are tasked with collaborating to ensure the availability of independent advocacy services in their area. The MHA was amended in 2017²¹ and people's right to access advocacy was strengthened. Health boards and local authorities are now required to tell the Commission how they ensure that people in their area are able to access advocacy for people and what plans they have for future development.

In April 2018, the Commission published a report into advocacy provision in Scotland called *The Right to Advocacy*²². We found that many areas did not have enough independent advocacy services with specialist knowledge and expertise in supporting children and young people with mental health difficulties. Since then we have done some further work in this area and published a follow up report in 2023²³. We found that more areas had now provision for specialist mental health advocacy for children and young people, however there were still some gaps. We recommended that all areas in Scotland should have plans to provide specialist mental health advocacy services for children and young people by 31 March 2024.

20 Section 2, Mental Health (Care and Treatment) (Scotland) Act 2003

21 <https://www.gov.scot/publications/mental-health-scotland-act-2015-key-provisions/>

22 <https://www.mwscot.org.uk/news/right-advocacy-review-advocacy-planning-across-scotland>

23 https://www.mwscot.org.uk/sites/default/files/2023-04/TheRightToAdvocacy2022_April2023.pdf

2.5 Understanding what matters most to people accessing support and services is crucial in informing our work. The Commission employs three participation and engagement officers who work to ensure that the views of individuals and relatives/carers are captured and reflected in our activity. Having a person with lived experience and a relative/carer on our Board also means that those voices are at the heart of our decision-making.

The three participation and engagement officers work with a wide range of individuals, groups and organisations and are involved in various aspects of Commission work including visits and engagement. The participation and engagement officer for relatives/carers engages with Young Carer groups as part of their regular activity and between April 2020 and March 2023 met with more than 80 parents or carers of young people with mental health difficulties and gave presentations to four specific parent and carer groups.

2.6 We continue to work out how to strengthen our existing approaches to include the voices of children and young people in our work on a routine basis and, in particular, the views of children and young people who have been involved with mental health services. We have explored and used examples of the best approaches used by other agencies to engage with children and young people in order to support their right to have their voices heard about our work.

More recently, we have begun to systematically explore how best to engage with children and young people who have experience of mental health services, including inpatient care and treatment, so that we can gather their views of the work of the Commission. A key challenge has been to try and gather their views in a representative way that both reflects the broad range of their experiences and maintains the independence of the Commission.

For this year's report we made links with a small number of children's rights officers in health board areas and worked with the Dumfries and Galloway Youth Mental Health Forum who took part in a consultation and gave us feedback on an early draft of this report with suggestions on how to improve it. Many members also designed and developed artwork and graphics to accompany the report to support its visual appeal and ensure that involvement of young people was integral to its content and structure.



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3. Civil rights and freedoms



The UNCRC Articles relevant to this section include children's rights to move freely in public spaces and to meet with others (Article 15); to think and believe what they like (Article 14); to access information (Article 17) and to speak their mind (as long as it is not harmful to others); to keep personal matters and communications private (Article 16); and for their rights to be protected from inhumane or degrading treatment (Article 37).

This section describes the ways in which our work tries to ensure that restrictions on children and young people's freedoms are reduced to the minimum necessary and outline how we try to protect privacy and confidentiality issues by robust data protection within our own organisation. The Commission is a member body of the National Preventative Mechanism which is a body that aims to strengthen protections for children and young people and adults who are detained and safeguard their rights.

3.1 Every time we visit Scotland's three specialist adolescent units and the national child inpatient unit, we review any restrictions that are placed on children's and young people's freedom while they are staying there. This activity became particularly important during the period of Covid-19 lockdown when measures were introduced into hospitals to try and limit the transmission of Covid-19 within the hospital environment by limiting freedom to move around the ward and the hospital and between the ward and community. This had a substantial impact on children and young people's freedoms at times.

During our visits to the inpatient units for children and young people we regularly asked about the restrictions on movement for children and young people and made a number of recommendations to services which are detailed in our local visits reports²⁴. A key principle in relation to this practice is that any restriction on movement should be justified, proportionate and necessary and represent the minimum restriction possible and for the shortest time possible. As part of our regular hospital visits we continue to routinely review children and young people's access to outdoor space as part of our visits and review the facilities available to support opportunities for them to meet and socialise together. We ask the children and young people about these opportunities during our visits and, when we find issues, we make recommendations in our visit reports²⁵.

3.2 When people are detained in hospital under the MHA, their freedom of movement can be lawfully restricted. In addition sometimes when people who are detained in hospital their freedoms may be further limited following assessment by the consultant psychiatrist in charge of their care that the restrictions are necessary to prevent harm coming to the person or those they are in contact with. A common example of this happening would be when an individual could have their ability to make phone calls and communicate to certain people reduced. This is only lawful when the person has been detained in hospital and has been designated as a specified person. When a person has been specified in this way, they can ask the Commission to review the restrictions and decide whether these are appropriate; the Commission can remove these restrictions if we believe they are inappropriate. Between 2020 and 2023, although there were no requests for a review of specified person designations relating to children and young

²⁴ [StobhillHospital-SkyeHouse-RegionalAdolescentInpatientUnit_20220323u.pdf \(mwscot.org.uk\)](#)

²⁵ [Dudhope-YoungPeoplesInpatientUnit_20231116u.pdf \(mwscot.org.uk\)](#)

[Royal Hospital for Children and Young People, Melville Unit 20230928a.pdf \(mwscot.org.uk\)](#)

[StobhillHospital-SkyeHouse-RegionalAdolescentInpatientUnit_20230328a.pdf \(mwscot.org.uk\)](#)

[RoyalHospitalForChildren-Ward4NationalChildInpatientUnit_20221129a.pdf \(mwscot.org.uk\)](#)

people under the age of 18 years, we made recommendations about the use of and training for specified persons in one of our visits reports to a specialist adolescent unit when we visited²⁶. We also gave specific advice about the use of specified persons in children and young people under the age of 18 in eight duty calls to our telephone advice line.

3.3 To support the right of people to access information, the Commission has a telephone advice line that may be accessed in office hours during the week. Telephone calls to the Commission cannot be restricted for any reason and our advice line is free and available to everyone, including children and young people, their family and carers, and also professionals who work with children and young people.

After a review of the telephone advice line in 2022, we wrote to agencies across Scotland who support young people with mental health issues or learning disability to publicise the advice line to them, asking them to highlight it to the children and young people that they work with.

3.4 The Commission collects information about individuals as part of our work and we have a data protection policy²⁷ and a Caldicott guardian working to ensure that data use and storage in the Commission is in line with current legislation. As mentioned earlier, we made a video²⁸ that is available on our website and explains how we store people's information at the Commission; this has been developed to ensure it is understandable and accessible for a wide cross section of people. Our website also contains accessibility information²⁹, our accessibility policy³⁰ and privacy statement³¹ with information explaining how we handle people's information³².

3.5 The Commission is part of the National Preventative Mechanism (NPM), a body established from the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT). OPCAT is an international human rights treaty designed to strengthen the protections for people deprived of their liberty for whatever reason. It recognises that such people are particularly vulnerable to breaches of their rights and aims to prevent their ill treatment through establishing a system of visits or inspections to all places of detention. The UK participates in OPCAT and established the NPM in 2009; the NPM acts to safeguard human rights and protect individuals from unlawful deprivation of liberty.

The Commission is a member body of the UK's NPM. All 21 member bodies visit and inspect places of detention such as prisons, places of police custody, immigration removal centres, children's secure accommodation and mental health institutions. The NPM publishes annual reports, corresponds with the UK and Scottish Governments and international human rights bodies, and undertakes thematic projects on preventing ill treatment. The Commission's role, in visiting hospitals and wards where children and young people are detained, forms a key element of this activity and is an important safeguard to ensure independent and unrestricted access by Commission staff to children and young people who are lawfully detained in hospital, and to promote the safeguarding of their rights.

26 https://www.mwscot.org.uk/sites/default/files/2023-07/StobhillHospital-SkyeHouse-RegionalAdolescentInpatientUnit_20230328a.pdf

27 [Data Protection Policy 2021.pdf \(mwscot.org.uk\)](https://www.mwscot.org.uk/about-us/about-your-personal-information)

28 <https://www.mwscot.org.uk/about-us/about-your-personal-information>

29 [Accessibility Information | Mental Welfare Commission for Scotland \(mwscot.org.uk\)](https://www.mwscot.org.uk/about-us/about-your-personal-information)

30 [accessible_information_policy_2018.pdf \(mwscot.org.uk\)](https://www.mwscot.org.uk/about-us/about-your-personal-information)

31 [Privacy Policy | Mental Welfare Commission for Scotland \(mwscot.org.uk\)](https://www.mwscot.org.uk/about-us/about-your-personal-information)

32 [About your personal information | Mental Welfare Commission for Scotland \(mwscot.org.uk\)](https://www.mwscot.org.uk/about-us/about-your-personal-information)

4. Violence against children



Our focus in this section is on instances where children might experience violence, the definition of which may be broad. In this context, violence can include physical and/or mental violence, abuse and neglect, maltreatment and exploitation (Article 19). However this area also touches on children's rights to be protected from bullying and from self-injury and/or self-harm and suicide. Again there is an emphasis that children should not be subjected to torture or to other cruel, inhuman or degrading treatment or punishment including physical or corporal punishment (Article 37 (a)).

In this section we report on how we have produced guidance and influenced policy that specifically addresses situations where children or young people need to be restrained or even secluded to ensure that this is not in breach of their rights, as defined by UNCRC.

4.1 Violence against children, including cruel, inhuman or degrading treatment of children, is not tolerated in mental health services and a core purpose of the Commissions activity is to reduce the likelihood that this should happen. We do this by visiting people in hospital, providing advice through our telephone advice line, asking questions and finding out information through our investigation work and by publishing our good practice guidance.

Sometimes when children and young people are very unwell, they may be restrained in hospital as part of their treatment in order to keep them safe and make sure that others around them are kept safe also. In a very limited number of circumstances, a young person may be placed in seclusion which means that they are looked after in an environment on their own to reduce the likelihood that they will become upset and distressed.

The Commission has published guidance about the safeguards that are necessary and should be in place when seclusion and restraint is used, and this is available on our website^{33 34}.



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33 https://www.mwscot.org.uk/sites/default/files/2019-10/Seclusion_GoodPracticeGuide_20191010_secure.pdf
34 https://www.mwscot.org.uk/sites/default/files/2019-06/rights_risks_2013_edition_web_version.pdf

5. Family environment and alternative care



It is the right of every child to experience a nurturing home environment, regardless of their circumstances and, in this section, we address the family environment, the primary role of parents and the support that parents should be able to receive in order to bring up their children (Article 18 (1-2)). We also focus on the role of parental guidance and a child's evolving capacities (Article 5) and the rights of children to not be separated from their parents unless this is in their best interests (Article 9). Finally, we reflect on the right of children to be well cared for, if they live apart from their parents, and to be protected from all forms of violence and abuse.

5.1 The law regarding the use of parental authority to consent to treatment on behalf of a child or young person under the age of 16 years can be complex and we regularly respond to questions about this via our telephone advice line. We raised the need to simplify the laws affecting authority for treatment in children as part our response to the consultation on the SMHLR review in May 2020 and, historically, have provided training to the members of the Mental Health Tribunal on this topic. In our published guidance *Nutrition by Artificial Means*³⁵ and *Capacity and Consent in Young People with Borderline Personality Disorder*³⁶ we also discuss this issue.

5.2 Article 7 of the UNCRC states that “every child has the right to... know and be cared for by their parents” and Article 9 states that “children must not be separated from their parents against their will unless it is in their best interests”. Research has shown that the time following a child's birth is hugely important for both the newborn baby and their mother. Sometimes, however, mothers can become severely unwell following the birth of their baby and may need admission to hospital.

When a mother who has a baby under the age of 12 months requires inpatient mental health treatment, there is a legal duty in Scotland to provide for joint admission of both mother and baby when this is in the best interests of mother and child. Scotland has two regional mother and baby units. In 2015 we carried out a national perinatal themed visit³⁷ and found that over a third of mothers admitted to mental health care did not receive care with their baby in either of those units. We made recommendations to Scottish Government at that time, including a call to establish a national managed clinical network for perinatal mental health in Scotland. The Scottish Government established the Perinatal Mental Health Network (PMHN)³⁸ in 2017, and confirmed their commitment to supporting services with specific financial resources.

Working with the PMHN, we agreed the need for collating national data on perinatal admissions across health boards. As part of our local visiting programme we regularly visit the two Mother and Baby Units in Scotland, one in St John's Hospital, Livingston and the other in Leverdale Hospital in Glasgow. During these visits we are keen to speak with parents about their experience in hospital and the care provided for themselves and the baby.³⁹ Between April 2020 and March 2023 we made three visit to these wards and reviewed the care of 13 patients.

35 https://www.mwscot.org.uk/sites/default/files/2019-06/mhc-guides-nutrition-_revised.pdf

36 <https://www.mwscot.org.uk/news/capacity-consent-and-compulsion-young-people-borderline-personality-disorder>

37 https://www.mwscot.org.uk/sites/default/files/2019-06/perinatal_report_final.pdf

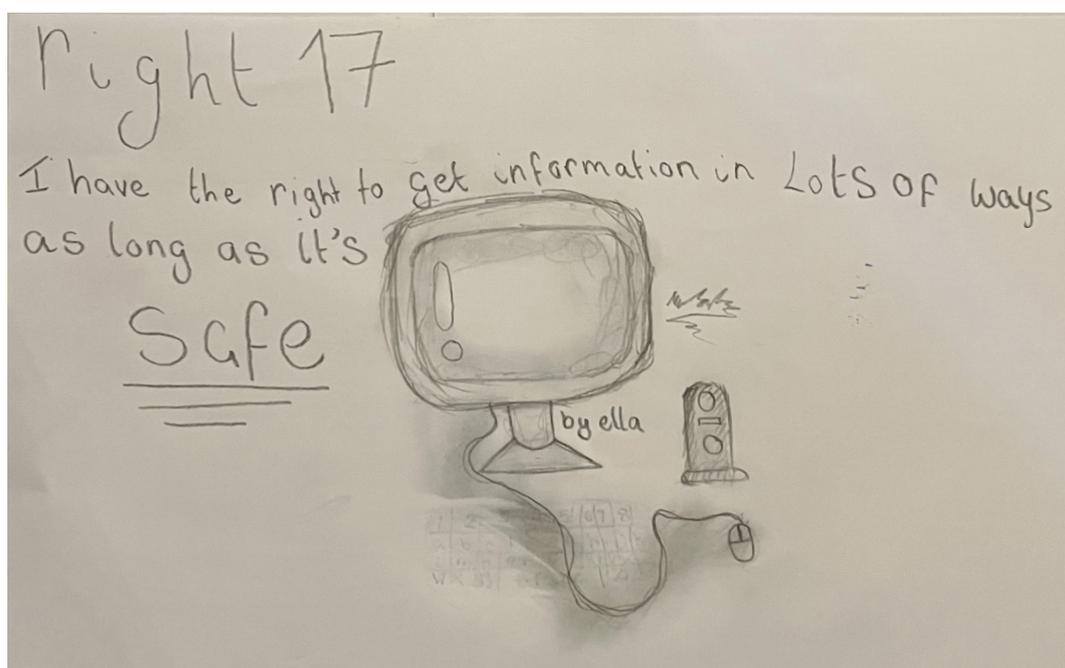
38 <https://www.pmhn.scot.nhs.uk/about/>

39 https://www.mwscot.org.uk/sites/default/files/2023-04/LeverdaleHospital-WestOfScotlandMotherAndBabyUnit_20230124a.pdf

https://www.mwscot.org.uk/sites/default/files/2022-10/StJohnsHospital-MotherBabyUnit_20220816a%2B.pdf

We interviewed six mothers and spoke with two fathers during these visits and made a number of recommendations including reviewing visiting arrangements for family members during Covid-19 pandemic lockdown measures⁴⁰.

5.3 Under the Children and Young People (Scotland) Act 2014, public bodies named as Corporate Parents, such as the Commission, are required to work together to promote the rights and wellbeing of all care experienced children and young people. Our Board and executive leadership team (ELT) are informed of their duties and fulfils their responsibilities as corporate parents (Article 18). In August 2021, members of the Children and Young People's group at the Commission presented their *Corporate Parenting Plan*⁴¹ to a wide range of staff within the Commission to raise awareness and support learning within the Commission as a whole in relation to our Corporate Parenting duties and our current plan. In March 2023, our Board members and managers underwent refresher training around corporate parenting provided by Who Cares? Scotland. The Commission also engages and collaborates with other Corporate Parents as part of a Collaborative Corporate Parents Network to support best practice and share innovation.



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40 [LeverdaleHospital-MotherAndBabyUnit_20211129a.pdf \(mwscot.org.uk\)](#)

41 https://www.mwscot.org.uk/sites/default/files/2019-06/corporate_parenting_plan2018-21.pdf

6. Disability, basic health and welfare



In this section we focus on the health and welfare of all children and young people and the consideration, in particular, of the rights of disabled children and young people. The UNCRC states that all children should have the best possible standard of health, including access to relevant health services within the country's available resources, with a focus on the determinants of children's health, including mental health. Under Articles 26 and 27, where families are living below the minimum income threshold, children have a right to financial support from the UK Government to meet their basic needs. This section includes a child's right to life, survival and development (Article 6), children with disabilities (Article 23) and children's right to health and health services (Article 24).

Access to high quality health care is a basic but vital right for children and young people and we explain how we protect and promote this in this section. Our telephone advice line provides critical support and signposting to children and young people, their parents and carers, and professionals. However, we have raised – and continue to raise – concerns regarding the availability of appropriate inpatient accommodation for children and young people with mental health issues across the country.

6.1 We aim to ensure that children and young people have access to the high quality health care that they need (Article 24). A key activity of the Commission is to visit individuals in hospitals or in the community to find out whether they are receiving appropriate care and treatment and to ensure that their rights are being respected. When we visit we may try to find out more about a particular ward and the care that is provided there or it may be made to a specific young person because they have been placed in an adult ward and are assessed as being particularly vulnerable.

In many cases, when we visit and have concerns, we raise the issue with the clinicians involved in the individual's care at the time of our visit; we may also make recommendations in the reports that we produce reflecting particular areas of practice. Between April 2020 and March 2023, we made nine visits to specialist child and specialist adolescent mental health units in Scotland and reviewed the care of 39 children and young people as part of these visits.

In addition to these local visits to services we may also undertake themed visits each year, which focus on a particular aspect of care and treatment across a wide range of locations, and which involve meeting people who have experience of mental health care either in hospital or in the community. One example of this was our eating disorder themed visit⁴² undertaken during 2019-20 and published in September 2020. As part of this themed visit we met with 22 young people under the age of 18 to ask them about the treatment of their eating disorder.

42 https://www.mwscot.org.uk/sites/default/files/2020-09/EatingDisorders_ThemedVisitReport_03Sept2020.pdf

6.2 When we have questions about the care and treatment of a young person and our initial enquiries do not provide us with the information that we need or when we have ongoing concerns about the young person's care we may make further more formal inquiries into the care of the individual. These cases can arise from our visits, from information provided to us on the telephone advice line or from data provided as part of our monitoring activities.

In 2018, we introduced a new process for recording this type of investigation work, which we now call an active intervention where we make further inquiries and review care in more detail relating to an individual. This may or may not involve reviewing all medical or case files held on the individual concerned. Between April 2020 and March 2023 we undertook 23 active interventions relating to a child or young person under the age of 18.

6.3 Between April 2020 and March 2023, through our telephone advice line, we gave advice on 409 calls that related to the care and treatment of children and young people under the age of 18. However, the actual level of advice given, relating to children and young people under the age of 18, is likely to be higher than this, due to some callers requesting anonymity or requesting general advice, in which case specific details about the call may not be logged on our system.

Callers to our advice line can be children or young people themselves, their parents or carers, or professionals asking for advice about good practice. If we receive a call that raises concerns, we may take action there and then to try and rectify the issue or we make further inquiries into the circumstances of the care and treatment by gathering further information about the case. This may then feed into our active intervention and investigation work, as described in 6.2 above, when there are particular concerns about a child or young person's treatment.

6.4 A key element of Commission's activity in supporting children and young people's rights, and in shaping the future of mental health services, is undertaking the monitoring of admissions of children and young people, under the age of 18, to mental health wards in Scotland that have not been designed to meet their needs.

Article 24 of the UNCRC highlights the importance of children being able to access health services that meet their health care needs and the MHA requires health boards to provide sufficient services and accommodation to meet the needs of children and young people who require inpatient care and treatment.

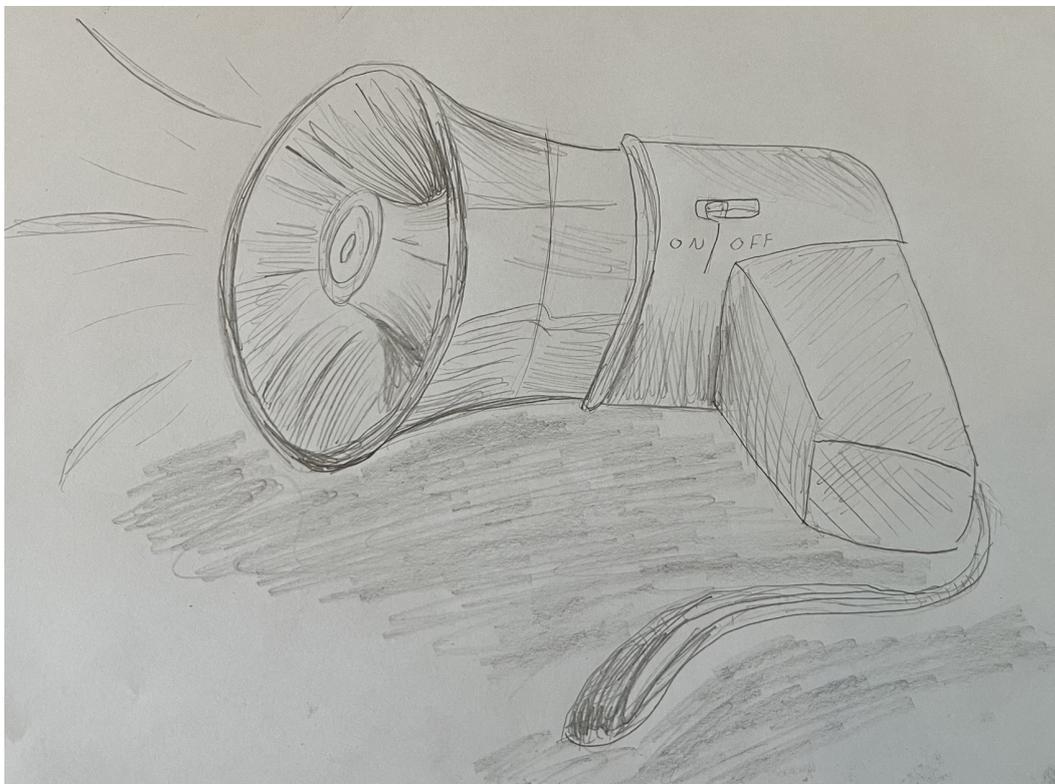
The Commission monitors the admissions of children and young people to wards that are not designed for their age group and gathers information about the care and treatment they receive which reflects their rights as children. Sometimes, when we have particular concerns about the circumstances of their admission or the child or the young person's vulnerability, we may go out to visit the child or young person to find out more about their mental health needs. Each year we publish a monitoring report to share our findings and make recommendations about the care that is experienced by children and young people or highlight challenges in the provision of services.

For over a decade the Commission has been raising concerns about the lack of appropriate accommodation for children and young people, for children and young people who have a learning or intellectual disability, and for children and young people whose mental health needs are associated with a criminal offence and best met by a forensic service. We welcome the fact that work has progressed to develop a medium secure inpatient forensic facility for young people in Scotland and that work is also ongoing to develop national specialist inpatient facilities

for children and young people with intellectual disability and also for intensive psychiatric care provision. Nevertheless we are still some distance away from ensuring that all children and young people in Scotland can access specialist inpatient mental health provision that meets their needs and we continue to draw attention to this lack of facilities in our annual children and young person monitoring reports and in any relevant responses to consultations.

6.5 Article 6 states that “every child has the right to life. Governments must do all they can to ensure that children survive and develop to their potential.” Over the timescale of this report the Commission was asked by Scottish Government to undertake a separate project looking into the care of individuals with mental health difficulties who had died while they were receiving compulsory treatment.

The intention of this project was to explore whether there was any learning from these experiences that could be developed and shared with the other services to try and help prevent similar future deaths. A small number of these people were children under the age of 18 years or had been treated within specialist child and adolescent mental health services.⁴³



Produced by Lauren, Dumfries and Galloway 2023

43 [Investigation into the death of Mr D - a young man who died in hospital while being treated for mental ill health | Mental Welfare Commission for Scotland \(mwscot.org.uk\)](#)

7. Education, leisure and culture



This section focuses on the right of every child to an education that will help them achieve their potential (Article 28) and also includes the rights of children to a broad curriculum (Article 29) and to recreational activities, leisure and play, and to take part in cultural life (Article 31).

When children and young people are in hospital due to mental health issues, access to education, to play and leisure opportunities, and to outdoor facilities, should be a key part of their care and treatment. Assessing, monitoring and making recommendations around this provision is a feature of our visits and investigations and we discuss these activities here.

7.1 We try to ensure that all children and young people who are in hospital due to mental health issues are able exercise their right to an education that develops their abilities to their fullest potential (Article 29). When we undertake our annual visits to Scotland's three specialist adolescent units and the National Child Inpatient Unit, we routinely make enquiries about the education provision within the units.

All units have access to education provided in the hospital and this schooling often forms an important way of structuring the child or young person's day; it also provides them with age-appropriate activities and interests. When we visit, we seek the views of children and young people, and their families, about their experience of education in the hospital; we may highlight any findings in our reports. Sometimes we make further enquiries about the availability of education for children and young people who are in hospital.

7.2 When a child or young person under the age of 18 is admitted to a non-specialist ward, we monitor this admission and gather information about what education is provided for them while they are an inpatient; we report on our findings annually.

The number of children and young people who receive education provision while they are an inpatient in an adult ward is often low. This may be because the young person is no longer attending school or the admission was during the school holidays or at the weekend; additionally, admissions may be too short to organise education provision or the young person may be too unwell to access education. We continue to highlight children and young people's rights to access education as part of our monitoring duties.

7.3 We aim to ensure that hospitals provide children and young people with access to play and leisure opportunities, with outdoor facilities that include spaces suitable for those with disability (Article 31). In the past three years, we have made a number of recommendations in our local visit reports about access to recreational activities for children and young people in specialist adolescent units^{44 45}.

We also routinely gather information on access to age-appropriate recreational activities for children and young people when they are admitted to a non-specialist ward. We report on this data each year as part of our annual monitoring of non-specialist admissions.

When the freedom of children and young people who had been admitted to mental health wards during the Covid-19 pandemic was heavily restricted, we asked hospital staff about the range of activities available to children and young people and their access to leisure materials and outdoor space.

We were told that many wards with additional Covid-19 lockdown restrictions provided activity packs developed by Occupational Therapy staff to try and ensure that children and young people had access to leisure activities during their hospital stay⁴⁶.



Produced by Heather, Dumfries and Galloway 2023

44 [RoyalHospitalForChildrenAndYoungPeople-MelvilleYoungPersonsMentalHealthUnit_20220829a.pdf \(mwcscot.org.uk\)](#)
45 [Dudhope-YoungPeoplesUnit_20220927a.pdf \(mwcscot.org.uk\)](#)
46 [StobhillHospital-SkyeHouse-RegionalAdolescentInpatientUnit_20220323u.pdf \(mwcscot.org.uk\)](#)

8. Special protection measures



In this section, we describe the rights of children and young people who are particularly vulnerable and may be marginalised or require special protection. This includes children and young people who are in prison custody or detention (Article 40), who are migrants, refugees or asylum seekers (Article 22), or who are the victims of torture (Article 37 a-d), human trafficking (Article 35), sexual exploitation (Article 34) or involvement in drug misuse (Article 33).

We have made a number of recommendations regarding safeguarding the rights of children and young people whose circumstances or experiences make them particularly vulnerable, and who are receiving care and treatment for mental health issues. The increased provision of single rooms for under 18-year-olds on adult wards and the use of enhanced observations are two positive outcomes of this work

8.1 In the past, when we asked children and young people admitted to adult wards about their experience they told us that they sometimes felt unsafe on the ward or had been exposed to conversations about drug use, for example, that they would have preferred to avoid.

Following the introduction of the Mental Health Act we made a number of recommendations to hospital services to provide single room accommodation for children and young people on adult wards, and to strongly consider the use of enhanced observations/individualised interventions to ensure children and young people feel safe on the ward. We welcome the fact that these protections are now available consistently for many children and young people. Each year we monitor the use of single rooms for children and young people under the age of 18 on adult wards and report on our findings as part of our monitoring activity. In recent years, we have found that high levels of children and young people are now accommodated in a single room (81% in 2021-22) and are placed on enhanced observations/individualised interventions (68% in 2021-22) when an inpatient on an adult ward⁴⁷.

8.2 As part of its visiting programme the Commission visits prisons across Scotland to find out about the care and treatment of individuals with mental health needs within the prison service. A small number of children and young people have been visited in His Majesty's Young Offenders Institution Polmont and work undertaken by Commission staff to support their access to appropriate mental health accommodation.

47 https://www.mwscot.org.uk/sites/default/files/2022-12/ChildrenYoungPeople_MonitoringReport_2021-22.pdf

Reflections and next steps

Through the Commission's activity and work with other agencies and services who directly support the mental health of children and young people, we continue to strive to ensure that children's rights are protected and promoted in Scotland.

Our work with health, social work and social care services seeks to ensure that their work provides good standards of care and treatment, reflects children and young people's mental health needs and respects the rights of children and young people and their families. We also continue to advocate for the rights of children and young people to access age-appropriate services that meet their health care needs.

We provide advice and guidance on the use of mental health and capacity legislation that respects children and young people's rights and we continue to communicate the importance of improved mental health and capacity legislation that better reflects these rights and meshes strongly with other children's legislation.

Looking forward

We value the views of children and young people and their families and believe these views are essential in helping to shape services that meet children and young people's needs and respect their rights. We are committed to developing our strategic approach to improving the ways in which we can gather these views and further embed our duties and commitment to children and young people's rights in our work. We are very grateful to the young people of the Dumfries and Galloway Mental Health Youth Forum for their comments and feedback regarding this report and about our work in promoting and furthering children's rights. We are keen to build on these links and explore how we may strengthen and broaden these relationships in the future.

Over the next three years, our priority will be to continue to review how we communicate with and consult with children and young people as part of our regular Commission activity. An important part of this will be the work undertaken by the engagement and participation officers at the Commission whose work continues to develop in this area, establishing links with various bodies relating to children including young carers groups.

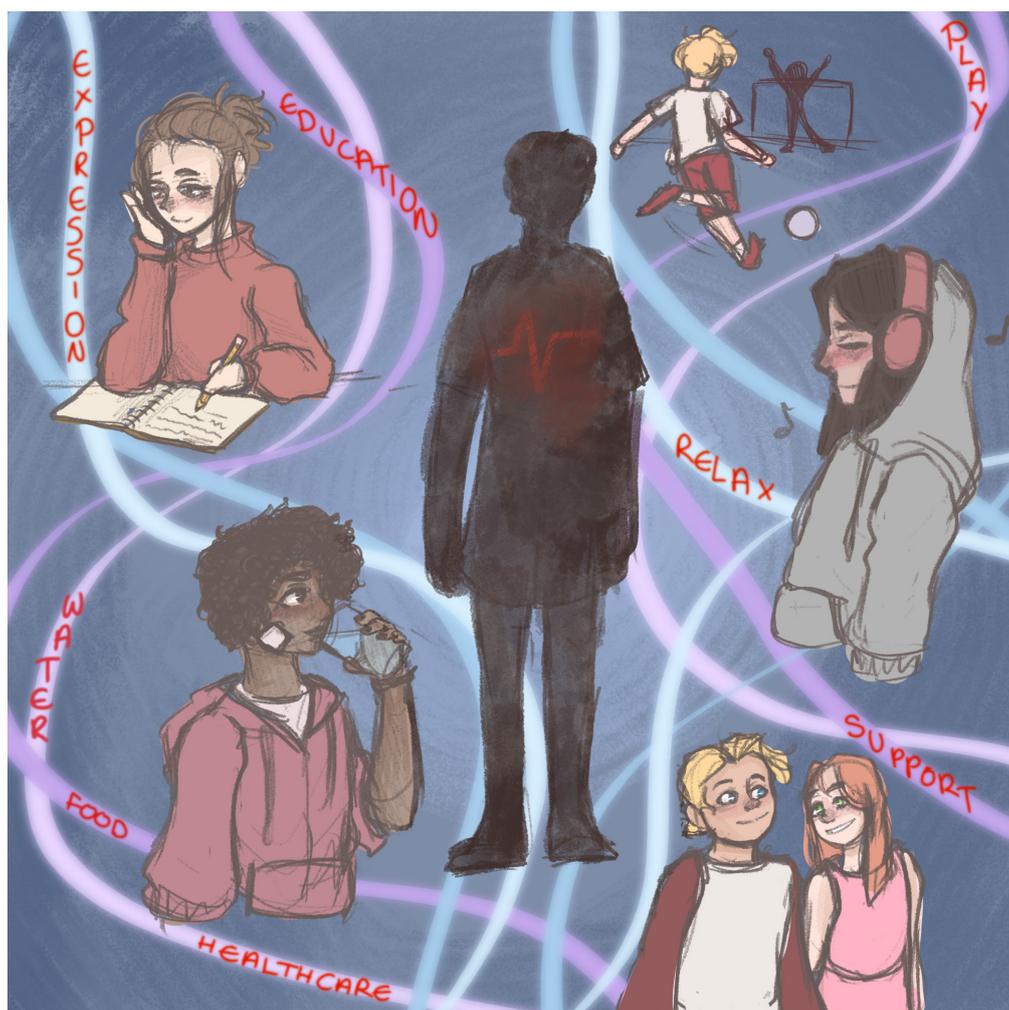
We remain keen to ensure that all Commission staff, across all parts of our organisation, grow in their depth of understanding and ability to integrate our duties in relation to children and young people's rights, with the more general work of the Commission. This is particularly important with the forthcoming incorporation of UNCRC into Scottish legislation and with future changes to mental health legislation which will require all staff in public bodies to be confident in their navigation and use of children's rights.

We will continue to collaborate with other children's agencies and other key stakeholders to ensure that we have the opportunity to enrich and contextualise our knowledge and experience as it develops. We are presently exploring future themed visit proposals relating to children and young people, some of which may involve collaboration with other agencies. In 2024 we are undertaking a pilot project looking at what happens when parents are detained in hospital and will revisit the findings of a themed visit that the Commission undertook in 2013⁴⁸. The aim of this pilot is to find out whether there has been any substantial change to the approaches

48 [when_parents_are_detained.pdf \(mwscot.org.uk\)](https://www.mwscot.org.uk/when_parents_are_detained.pdf)

taken when parents are detained in hospital or to the range of resources that are available to support relationships between parents and their children with the parent is detained. We hope the findings of the pilot will let us know whether a further themed visit relating to this area would be useful in the future.

Finally, we are currently progressing a new core information management system, which we hope will transform our information and data reporting, including our information as it relates to children and young people. We are also continuing to explore our monitoring activity and are currently putting forward together a proposal to widen our access to statistical information that should strengthen and enrich our annual monitoring and reporting of admissions of children and young people to non-specialist wards. We hope that by having a new IT system and better representation of admissions to non-specialist wards across Scotland, any gaps that exist in relation to current service provision can be identified more easily and better support service development in the future.



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