

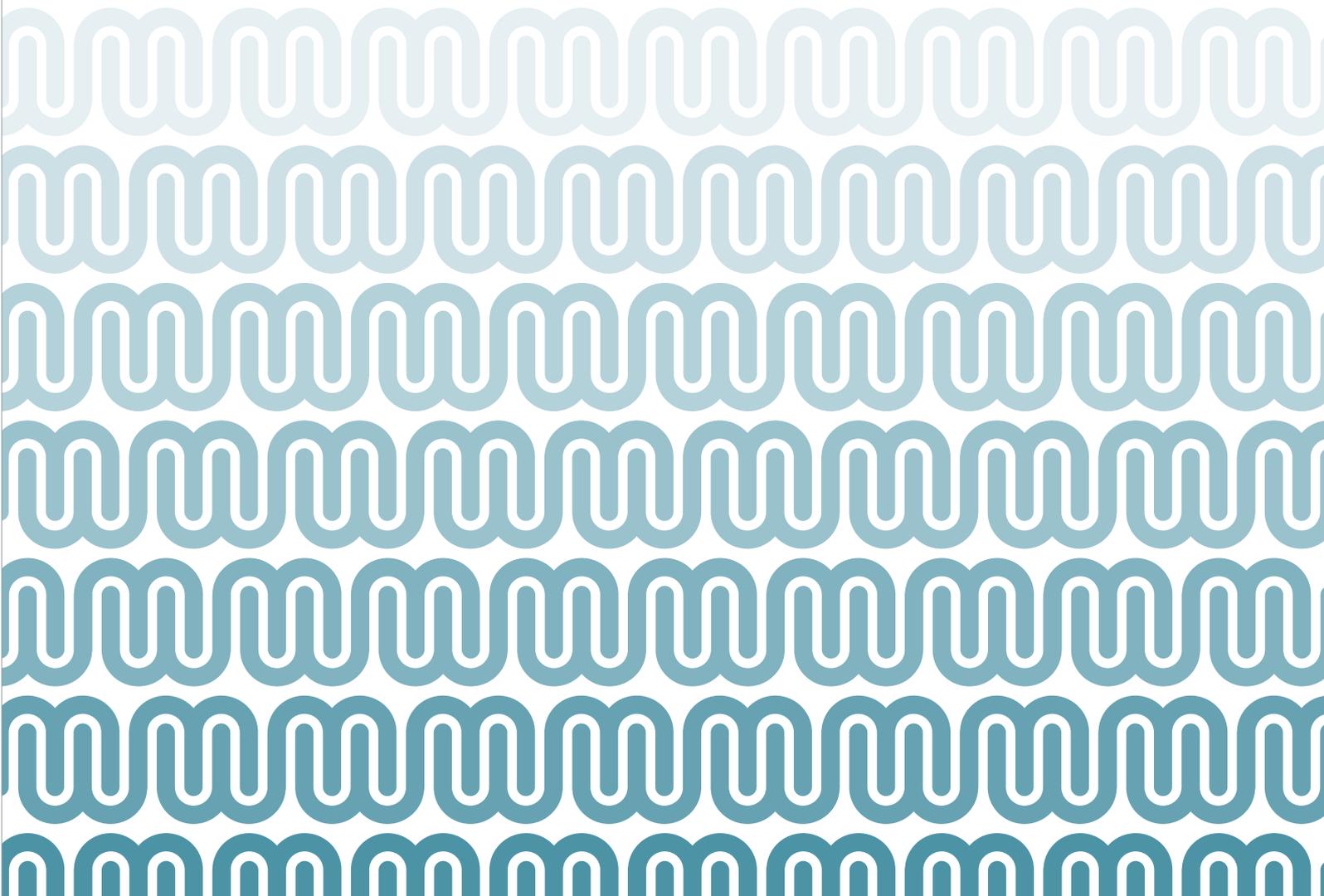


mental welfare
commission for scotland

Children's Rights Report 2017-2020

Corporate document

March 2021



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.

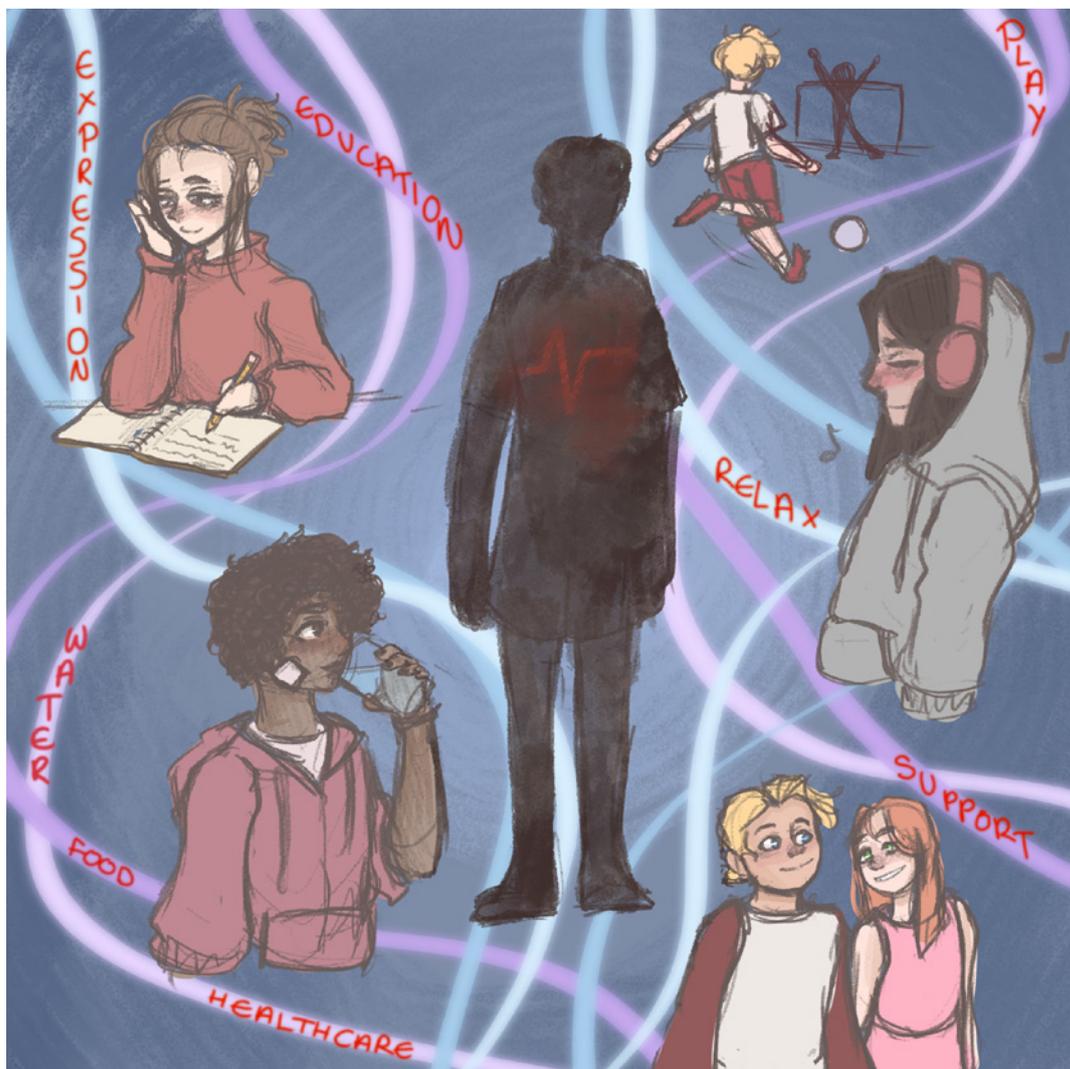
- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

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Produced by Thomas, Dumfries & Galloway

Foreword



This is the Commission's first 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. By working with and supporting other organisations, we seek 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 is very much focussed on the individual and their experience of care and treatment. At other times, however, our work may be focussed on groups or even whole populations. 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 particular 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.

In the preparation of this report we are very grateful for the contribution provided by a group of young people all of whom have had experience of mental health services in Scotland and all of whom are members of Dumfries and Galloway Youth Council and Champion's Board. Two of the young people very kindly gave us permission to use their artwork on the theme of children's rights and we are pleased to be able to include these in the report.

Julie Paterson

Chief Executive

Mental Welfare Commission for Scotland

About the Mental Welfare Commission

The Mental Welfare Commission ('the Commission') is an independent organisation originally set up in 1960; our duties are set out in current mental health and incapacity law. Our role is to safeguard the rights and welfare of people with a mental illness, learning disability or related conditions, especially those who are vulnerable and less able to safeguard their own interests and make decisions about their treatment.

Individuals can sometimes have restrictions placed on them in order to receive mental health care and treatment. When this happens, we make sure that this is legal and ethical and in line with the principles that guide the use of mental health and incapacity law. We draw on our experience of health and social care, and the experience of service users and carers, in order to do this.

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 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. 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 Mental Health (Care and Treatment) (Scotland) Act 2003 ('the mental health act' or 'the MHA') and the welfare parts of the Adults With Incapacity Act 2000 ('the AWIA'). We check the paperwork we receive and let the professionals and/or the person receiving treatment know if we think there is a problem. If there is a serious issue, we may follow this up through visits or investigation work. 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 annually. Since 2019, we have also begun to monitor the admissions of mothers who are admitted to hospital with mental health issues shortly after their child's birth when their admission is not to a specialist mother and baby unit.

4. Investigations and casework

Where we believe an individual may not be receiving the right care and treatment, we may make enquiries into the case 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.

Executive summary

Although the Commission does not provide services to or directly support children and young people, we try to ensure that children’s rights are protected and promoted through our work with the services in Scotland that do work directly with children and young people and their families.

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

The Commission welcomes the legal duties that have been set out in the Children and Young People (Scotland) Act 2014 (‘the 2014 Act’). These require us to consider the steps we have taken to secure or further effect the rights of children as described in the United Nations Convention of the Rights of the Child (UNCRC) and to report on these 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 names the Commission as a Corporate Parent, which requires that we also uphold the rights and promote the 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 2018¹ and will review these and report on future plans in 2021.

The purpose of this report

This report sets out the actions the Commission has undertaken between April 2017 and March 2020 to support and promote children’s rights. It is the first report of this type from the Commission. The range of examples provided is wide and reflects the broad-ranging nature of our work; it demonstrates our commitment to ensuring that the rights of all children and young people are protected, respected and realised, as enshrined in the UNCRC.

How this report is structured

We have grouped our activity within sections whose headings reflect ‘clusters’ of children’s rights as defined by specific Articles of the UNCRC. This format also follows Scottish Government guidance to support organisations producing Children’s Rights Reports².

The eight sections that follow explore 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; and special protection measures. Each section begins with an overview of our work and a recognition of the most relevant Articles from UNCRC; we then detail our activities in response to these, highlighting specific outcomes such as guidance publications, development of services, changes to policy or recommendations for change.

It is important to bear in mind that many of our individual activities serve to protect the rights of children across several of these clusters. For example, when we visit children and young people in a ward that specifically looks after children and young people with mental health issues, 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).

¹ https://www.mwscot.org.uk/sites/default/files/2019-06/corporate_parenting_plan2018-21.pdf

² <https://www.gov.scot/publications/guidance-part-1-section-2-duties-public-authorities-relation-uncrc/>



Produced by Alix, Dumfries & Galloway

Key points

In **Section 1. General measures of implementation**, we explain how we promote children’s rights primarily through the work of our Children and Young People’s group at the Commission. In addition to informing and contributing to the continuous professional development of our staff, this group shares information and collaborates with other children’s agencies and services, and supports the Commission to prepare formal responses relating to matters affecting children and young people. The Commission has a number of duties to eliminate unlawful discrimination and this includes discrimination against children and young people. We explore this further in **Section 2. General principles**, where 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.

Upholding children’s and young people’s civil rights and freedoms is enshrined in UNCRC. **Section 3. Civil rights and freedoms** demonstrates ways in which we work to ensure this happens in practice by reviewing and assessing restrictions, exploring privacy and confidentiality issues and establishing robust data protection within our own organisation. As a member body of the National Preventative Mechanism, we aim to strengthen protections for children and young people who are detained, and safeguard their rights. In **Section 4. Violence against children**, 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. Violence against children, including cruel, inhuman or degrading treatment of children, is not tolerated in mental health services.

We take our Corporate Parenting responsibilities seriously, ensuring our work to support and promote children's and young people's rights takes into account those who are care experienced. In **Section 5. Family environment and alternative care**, as part of our focus on child-parent relationships, we provide details of our collaboration with the Perinatal Mental Health Network to monitor and improve services for mothers and babies. 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 **Section 6. Disability, basic health and welfare**. 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.

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 highlight our activities in **Section 7. Education, leisure and culture**. Finally, in **Section 8. Special protection measures**, we note that 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.

1. General measures of implementation

In this section, we address the overarching systems, structures and resources in place to respect and realise children's rights. Article 4 of the UNCRC concerns the protection of rights and ensuring that the UNCRC rights are implemented through laws and other measures to the maximum extent of resources available.

This is relevant here as we focus on how government and public bodies are expected to put into practice children's rights, as defined by the UNCRC, through law, policy and any decisions which impact on children. This applies both to legal measures (through legislation) and 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 We are committed to the implementation of UNCRC children's rights, through complying with rights, provisions and duties within the 2014 Act and other relevant legislation and policy as identified in Article 4. Within the Commission, we promote children's rights through the work of our Children and Young People's group. Article 4 states that we should do all we can to "make sure every child can enjoy their rights by creating systems... that promote and protect children's rights." Our Children and Young People's group focuses on specific elements of the Commission's work in relation to children and young people and its role has evolved to ensure that the whole organisation works together to meet the legal duties outlined in the 2014 Act. In addition, the group considers activity across the Commission and ensures that children's rights are considered. It meets at least every quarter and plays a key role in our responsibilities and activities towards children and young people and their families. Currently, all members of the group have previous and/or present experience of working in children's services in Scotland and have an ongoing interest in these matters.

1.2 We have a skilled and competent workforce committed to 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; it acts as a resource to promote and maintain a knowledge base in the Commission that relates to children's rights. The Commission also has a regular 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 December 2018 and to our Board in June 2018.

1.3 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 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 Corporate Parenting Network, CAMHS Lead Clinicians, Royal College of Psychiatrists in Scotland Child and Adolescent Faculty Group, CAMHS Nursing Forum and the National

Preventative Mechanism (NPM) Children and Young Person subgroup. 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 to support, raise awareness, engage in monitoring or take action when necessary and appropriate.

1.4 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. A review of the Mental Health (Care and Treatment) (Scotland) Act 2003 ('the MHA') took place in 2015 with amendments to it being published in 2017. Members of the Children and Young People's group, together with other medical colleagues at the Commission, put forward recommendations regarding specific parts of the MHA that regulate the safeguards around the care and treatment of children and young people who are receiving this care and treatment based on the consent of their parents. Our recommendations reflected our views on the need for greater safeguards in the use of artificial nutrition for children and young people, and these were accepted. The work by Scottish Government to implement these changes and alter existing regulations remains outstanding, however, and the Commission will support the process of amending these regulations when work recommences.

The MHA and the Adults With Incapacity Act 2000 ('the AWIA') are currently being reviewed to decide whether changes need to be made to ensure that laws are working effectively and efficiently and are upholding individuals' human rights. The Scottish Mental Health Review team undertook a consultation exercise in 2019/20 and the Commission submitted a response to this in May 2020³. The Children and Young People's group at the Commission prepared the part of our response on matters affecting the rights of children and young people under the age of 18 and 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. In September 2019, we also submitted a written response to the inquiry undertaken by the Scottish Government's Justice Committee on the provision of secure care for children and young people in Scotland.⁴

1.5 As mentioned, a key activity of the Commission each year is to monitor the use of the MHA and parts of the AWIA. This is important because it gives an insight into how the law is being used in practice; it may also highlight areas that are causing concern or raise questions and provide information to support a formal review of parts of the legislation. In the last annual monitoring report of the MHA, in 2019, we described a significant rise in the use of the MHA (detention) of young people in recent years (especially in young men aged 16-17 years) using

³ <https://www.mwscot.org.uk/news/mental-health-act-review-mental-welfare-commission-response>

⁴ https://www.parliament.scot/S5_JusticeCommittee/Inquiries/SCCYP-Mental_Welfare_Commission_for_Scotland.pdf

powers that permitted their compulsory detention in hospital for up to 72 hours. In that report we proposed to undertake a further piece of work exploring some of the characteristics of these detentions; work was undertaken in early 2020 to do this and a report – *Characteristics of Young People Detained Under the Mental Health Act in Scotland 2015-19*⁵ – was published in the summer of 2020.

We also monitor the admissions of children and young people to mental health wards that are not designed for them and report on the findings each year. It is a legal requirement of health boards to provide appropriate accommodation and inpatient services for children and young people under the age of 18 years. We discuss this monitoring activity more fully in in **Section 6. Disability, basic health and welfare** when we look at children’s and young people’s rights to access appropriate health services. In the *Young Person’s Monitoring 2015-16* report⁶, we made a recommendation that national standards should be developed to support the care and treatment of children and young people when they are placed in non-specialist wards. The Scottish Government took this forward in its *Mental Health Strategy 2017-2027*⁷ as Action 19, building on guidance developed and previously published by the Commission and separate work undertaken by the Royal College of Psychiatrists and National Mental Health Development Unit⁸. The CAMHS Lead Clinicians group took forward the Action 19 work and members of the Children and Young People’s group at the Commission played an active role in supporting this. National guidelines⁹ were published in September 2020 with the aim of supporting improvement in the practice and provision of services for children and young people with mental health issues.

⁵ https://www.mwscot.org.uk/sites/default/files/2020-10/YoungPeopleDetainedUnderMHA_October2020.pdf

⁶ https://www.mwscot.org.uk/sites/default/files/2019-06/young_person_monitoring_report_2015-16.pdf

⁷ <https://www.gov.scot/publications/mental-health-strategy-2017-2027/>

⁸ AIMS-SC4Y Safe and Appropriate Care for Young People on Adult Mental Health Wards. Royal College of Psychiatrists. December 2009. <http://www.rcpsych.ac.uk/PDF/AIMS-SC4Y%20Standards%202009-2010.pdf>

⁹ <https://www.gov.scot/publications/best-practice-guideline-admission-adult-mental-health-wards-under-18s-mental-health-problems-adaptation-scotland/pages/2/>

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. The 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.

2.1 The Commission has taken steps to ensure that rights are promoted without discrimination, as stated in Article 2 of the UNCRC. Under the Equality Act 2010 and its regulations, we have a number of duties to eliminate unlawful discrimination or conduct prohibited by law¹⁰. In our 2019 report *Equality Outcomes and How We Plan to Achieve Them*¹¹ we again stated our aims that no one who comes into contact with our organisation is discriminated against or victimised, either directly or indirectly, intentionally or unintentionally, unlawfully or unjustifiably, on the basis of nine protected characteristics including age. 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 (BAME) organisations. The Commission's Operational Management Group (OMG) has a responsibility to ensure that equality and diversity is integral to all that we do. In addition, our Equalities Group includes a range of staff members from across the Commission and develops an action plan in relation to equality and diversity and monitors our activity towards this.

The Commission's Equalities Group has proposed that we publish two documents, on a regular basis, which outline our work towards eliminating discrimination in our activities. The first is the *Equality Outcomes and How We Plan to Achieve Them* report, which sets out our equalities goals and will be published every four years; the second is the *Equalities Outcomes and Mainstreaming* progress report, which is to be published every two years and describes the progress made in reaching these equalities goals. In January 2015, we set out a number of equality goals. These include ensuring that our visiting and investigations practice will always take equality issues into account and that we support services in the use of mental health and incapacity law to identify trends in relation to discrimination.

We continue to collect data on age, gender and ethnicity for all visits to individuals and analyse our local and themed visits on an annual basis to review trends in relation to these characteristics, taking action to eradicate any identified discriminatory trends; in this way, we attempt to tackle discrimination and to advance equality of opportunity. We analyse MHA and

¹⁰ 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.

¹¹ https://www.mwscot.org.uk/sites/default/files/2019-06/equalityoutcomes_april2018.pdf

AWIA legislation in relation to age and gender and report on these findings in monitoring reports. In 2018, we reviewed our approach to using Equality Impacts Assessment (EQIAs) and provided training to those carrying them out. EQIAs can be used to identify ways to take appropriate actions to remove or minimise any adverse impact of a service's proposed activities. We have undertaken EQIAs on key strategy areas and on new and reviewed policies in the Commission and are in the process of undertaking an impact assessment on the work of the Children and Young People's group at the Commission.

We reviewed our accessible information policy in 2018 and produced a set of three videos, which are available on our website, explaining in a straightforward way the role of the Commission and how we keep people's data safe and lawful. Using video format ensures that this information is accessible for people who do not read and the videos also include subtitles and BSL to ensure that as many people as possible, with different communication needs, are able to access this information. We also developed a policy on accessible information and provided leaflets for individuals, in an easy-to-read format, about matters relating to the MHA and AWIA. Our engagement and participation officers' work is inclusive of minority groups and they met with BAME and LGBT groups to explore ways in which we could reach under-represented communities.

2.2 The principle of the best interests of the child informs our work and everyday practice. A key role of the Commission is to provide advice and guidance on the use of the MHA and, in particular, the principles that guide its use. 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'¹² (just like the UNCRC definition of a child, a child is defined in the MHA as anyone under the age of 18 years). This principle reflects the UNCRC's general principle of individuals acting to promote a child's best interests and 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.

For example, in 2019, we reviewed and updated our published good practice guidance, *Nutrition by Artificial Means*¹³. We also developed and published new guidance on *Capacity, Consent and Compulsion in Young People with Borderline Personality Disorder*¹⁴. This latter piece of guidance developed from an aim to try to guide clinicians in this complex area and safeguard the rights of individuals. The guiding principle of acting in the child's best interests is central to this guidance 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 and by asking their parents and carers about matters that affect them, during our visits. We provide feedback on how their views have been acted on. A key activity that the Commission undertakes is visiting young people in mental health wards and in the community. Between March 2017 and March 2020 we visited 87 children and young people.

¹² Section 2, Mental Health (Care and Treatment) (Scotland) Act 2003

¹³ https://www.mwscot.org.uk/sites/default/files/2019-06/mhc-guides-nutrition-_revised.pdf

¹⁴ <https://www.mwscot.org.uk/news/capacity-consent-and-compulsion-young-people-borderline-personality-disorder>

Visits may try to find out more about a particular ward and the care that is provided there or may be made to a specific young person because they have been placed in an adult ward and are assessed as being particularly vulnerable. We also undertake themed visits each year, which have an aspect of care and treatment as their focus, and involve meeting with people who have experience of inpatient care or care in the community. We visited 22 young people under the age of 18 as part of our eating disorder themed visit¹⁵, undertaken during 2019/20. We also regularly undertake visits to young people aged between 16 and 18 who are placed under guardianship under the AWIA. Between March 2017 and March 2020, we visited 17 young people who were aged 16 or 17 and 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.

We visit Scotland's three specialist adolescent mental health units and the National Child Inpatient Unit each year and publish reports on our findings (pandemic restrictions withstanding). During these visits we speak to specialist advocacy groups in order to find out more about issues that might arise for young people over the course of the year. An example of this activity is described in the September 2018 visit to Skye House, the regional adolescent unit in Glasgow¹⁶.

Understanding what matters most to people accessing support and services is crucial in informing our work. The Commission employs two participation and engagement officers who work to ensure that the views of individuals and relatives/carers are captured and reflected in our work. 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 two 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; for example, the participation and engagement officer for relatives/carers engages with Young Carer groups as part of this work.

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. As part of our Corporate Parenting activities in 2018, we developed links with Who Cares? Scotland, a national organisation that supports and promotes the rights of children and young people who are care experienced. We consulted with care experienced young people on our Corporate Parenting plan¹⁷ and gathered their views on what issues mattered most to them.

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 the

¹⁵ https://www.mwscot.org.uk/sites/default/files/2020-09/EatingDisorders_ThemedVisitReport_03Sept2020.pdf

¹⁶ https://www.mwscot.org.uk/sites/default/files/2019-06/for_print_skye_house.pdf

¹⁷ https://www.mwscot.org.uk/sites/default/files/2019-06/corporate_parenting_plan2018-21.pdf

preparation of this report we sought the views of 16 young people, all of whom have experience of accessing CAMHS in Scotland and are involved in the regional Dumfries and Galloway Youth Council and also the Champions Board.

The ages of these 16 young people ranged from 14 to 21 years, and 10 of them gave us formal feedback about the report. Overall the feedback was positive with all 10 stating that the report was easy to read and understand. We are keen to learn from young people's views, and would like our next Children's Rights Report to reflect their comments more widely. We are encouraged to hear that all the young people thought we were on the right track to ensuring that we are furthering the rights of children, in line with the UNCRC, in our work. We very much value their contribution to this report and are keen to learn from their views and continue to develop our engagement with children and young people going forwards.

2.4 A key way in which the views of children and young people can be sought and listened to is through specialist independent advocacy; the Commission is working to ensure that children and young people have access to this through a number of our activities. Advocacy workers are individuals trained to support and promote the views of individuals about issues that affect them, and 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 were tasked with collaborating to ensure the availability of independent advocacy services in their area. The right to advocacy was strengthened in the amendments to the MHA in 2017¹⁸, and health boards and local authorities were required to inform the Commission how they had ensured access to advocacy for people in their area and how they were planning to do so in the future. In April 2018, the Commission published a report into advocacy provision in Scotland called *The Right to Advocacy*¹⁹. One of the findings was a much greater need for independent advocacy services with specialist knowledge and expertise in supporting children and young people. We recommended that there should be more advocacy services that can undertake this work to ensure that children's and young people's views about matters which affect them are supported and listened to.

¹⁸ <https://www.gov.scot/publications/mental-health-scotland-act-2015-key-provisions/>

¹⁹ <https://www.mwscot.org.uk/news/right-advocacy-review-advocacy-planning-across-scotland>

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).

3.1 Whenever 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. We also routinely review children's 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 reports.

3.2 When people are detained in hospital under the MHA, their freedom of movement can be lawfully restricted. Sometimes people who are detained in hospital may have their freedoms further limited following assessment by the consultant psychiatrist in charge of their care. An example of this would be where an individual could have their ability to make phone calls and communicate with the outside world 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 2017 and 2020, there were no requests for a review of Specified Person designations relating to children and young people under the age of 18 years.

3.3 A child's or young person's right to privacy and confidentiality can sometimes be complex and an area where there may be disagreement between the child or young person and the family members or adults who look after them and have rights and/or responsibilities towards them. Sometimes there may be disagreements between what is thought to be in their best interests and the child's or young person's own views. We are sometimes asked about privacy and confidentiality issues for children and young people via our telephone advice line and during our visits. An example arose during our visit to the Young People's Unit in Edinburgh, in May 2017, where issues regarding children's and young people's rights to confidentiality were one of the topics raised and addressed by us²⁰.

The Commission believes that a child's or young person's right to privacy is unclear in certain provisions of the current MHA. In January 2020, as part of our response to the consultation on the review of the MHA, we raised the issue of the automatic assignation of a Named Person under the MHA for children and young people under the age of 16. Currently, the decision about who should or could be the Named Person for the child or young person is not influenced by their own views or their capacity to decide for themselves who their Named

²⁰https://www.mwscot.org.uk/sites/default/files/2019-06/edinburgh_yp_unit_25_may_2017.pdf

Person should be. We recommend that this position should be reviewed as part of the current MHA review.

- 3.4** The Commission collects information about individuals as part of our work and we have a data policy 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 video²¹ 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.
- 3.5** To support the right to access information, the Commission has a free 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 available to everyone, including children and young people, their family and carers, and professionals who work with children and young people. After a review of the telephone advice line, in 2018, we wrote to agencies that support young people with mental health issues or learning disability to publicise the advice line to them and ask them to highlight it to the children and young people they work with.
- 3.6** In relation to the right to be protected from inhuman and degrading treatment, 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. Members of the Children and Young People's group attend both NPM and the NPM Children and Young People sub group.

²¹ <https://www.mwscot.org.uk/about-us/about-your-personal-information>

4. Violence against children

Our focus here 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). 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)).

4.1 We take measures to ensure that no form of cruel, inhuman or degrading treatment of children is tolerated in mental health services (Article 37 (a)) through our visiting, our advice, our investigation work and our guidance. At times when children and young people are very unwell, they may be restrained in hospital in order to ensure their safety and the safety of other people. Also, in a very limited number of circumstances, a young person may be placed in seclusion. The Commission has published guidance in relation to the necessary safeguards for the use of seclusion and restraint for individuals, and this is available on our website^{22,23}. In our themed visit on Autism and Complex Care Needs²⁴, published in October 2019, we made a number of recommendations concerning the use of restraint and seclusion, this included an extension of the work of the Scottish Patient Safety Programme (SPSP) on restraint to include its use in community settings for people with complex needs.

²² https://www.mwscot.org.uk/sites/default/files/2019-10/Seclusion_GoodPracticeGuide_20191010_secure.pdf

²³ https://www.mwscot.org.uk/sites/default/files/2019-06/rights_risks_2013_edition_web_version.pdf

²⁴ https://www.mwscot.org.uk/sites/default/files/2019-10/ASD_ThemeVisitReport-20191030.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.

Through our telephone advice line or through meetings with parents and carers during our visits, we provide advice to parents and carers, and to services, in relation to the role of parental guidance. During our yearly visits to Scotland's three specialist adolescent inpatient units and the national child inpatient unit, we meet with parents and carers and respond to and/or take forward any concerns or questions they may have regarding the care and treatment of their child. As part of our eating disorder themed visit²⁵ in 2019/20, we also interviewed a number of parents and carers of children and young people.

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; 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 review of the MHA in January 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*²⁶ and *Capacity and Consent in Young People with Borderline Personality Disorder*²⁷ we also discuss this issue.

The MHA requires services to limit the impact the detention of a parent in hospital may have on the child-parent relationship. We published a report and advice about this, *When Parents are Detained*²⁸, that includes checklists for services to ensure they are family friendly, and messages from children and young people about what they find helpful when visiting their parents in hospital. This guidance is available on our website and we continue to refer to it when giving advice during our visits or through our telephone advice line.

5.1 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, where this is in the best interests of mother and child. Scotland has two regional mother and baby units designed

²⁵ https://www.mwscot.org.uk/sites/default/files/2020-09/EatingDisorders_ThemedVisitReport_03Sept2020.pdf

²⁶ <https://www.mwscot.org.uk/sites/default/files/2019-06/mhc-guides-nutrition-revised.pdf>

²⁷ <https://www.mwscot.org.uk/news/capacity-consent-and-compulsion-young-people-borderline-personality-disorder>

²⁸ http://www.mwscot.org.uk/sites/default/files/2019-06/when_parents_are_detained.pdf

for this situation. However, in 2015 we carried out a national perinatal themed visit²⁹ 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, 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)³⁰ in 2017, and has 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 and, in April 2019, we began a national monitoring project to look at perinatal admissions to non-specialist wards with the aim of identifying barriers to mother and baby unit care, informing national service development and ultimately improving women's access to inpatient perinatal care, wherever they live in Scotland. The outcomes of the first two years of monitoring will be reviewed in spring 2021.

- 5.2** 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 wellbeing of all care experienced children and young people. The Commission engages and collaborates with 10 other Corporate Parents as part of the Corporate Parents Network to support best practice and share innovation.
- 5.3** Our Board and Operational Management Group (OMG) are informed of their duties and fulfils their responsibilities as Corporate Parents (Article 18). In June 2018, our Board members and managers underwent refresher training around Corporate Parenting provided by Who Cares? Scotland. In December 2018, members of the Children and Young People's group at the Commission presented their *Corporate Parenting Plan*³¹ to a wide range of staff within the Commission to raise awareness and support learning, within the Commission as a whole, in relation to Corporate Parenting duties. Actions from the current *Corporate Parenting Plan* include considering the particular needs of young people who are care experienced in the development of the Commission's business and strategic plans. Adaptations have been made to information gathering when we visit mental health wards – for example, when on visits it is now routine that Commission staff ask that care experienced individuals are given the opportunity to meet with us. We have also amended our monitoring of admissions of young people to non-specialist wards and now routinely collect information about whether they are care experienced. We report on these findings annually.
- 5.4** Children and young people who are care experienced or looked after should have access to the services they need (Article 9). Since 2019 we have begun undertaking an exercise to monitor cases that we become aware of, where children or young people are admitted to mental health inpatient facilities and have difficulties accessing secure care or appropriate alternative accommodation, including residential accommodation. This work is ongoing.

²⁹ https://www.mwscot.org.uk/sites/default/files/2019-06/perinatal_report_final.pdf

³⁰ <https://www.pmh.scot.nhs.uk/about/>

³¹ 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).

6.1 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.' Between March 2017 and March 2020, the Commission looked into the care of a small number of children and young people with mental health difficulties who have died, to explore whether there was learning from these experiences that can be developed and shared with the other services to try and help prevent similar future deaths. As these cases number less than five, we are not providing any further information here in order to preserve anonymity.

6.2 We try 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. 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 any reports that we produce reflecting particular areas of practice. If we are not satisfied with the response, or if the issues are particularly concerning, we may make further inquiries into the care of the individual and these cases are then reviewed as part of the Commission's investigations process. In 2018, we introduced a new process for recording this type of investigation work, where we make further inquiries and review care in more detail to source more information about the care and treatment of individuals. This may or may not involve reviewing all medical or case files held on the individual concerned. Between commencing this process in 2018, and up to March 2020, we undertook 11 enquiries into the care and treatment of children and young people under the age of 18.

6.3 Between March 2017 and March 2020, through our telephone advice line, we gave advice on 469 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 could be children or young people themselves, 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 investigation work, as described in 6.2 above, when there are particular concerns about a child's or young person's treatment.

6.4 In 2018, we began work on a project that systematically reviewed the Psychiatric Emergency Plans (PEPs) that health boards produce. These outline how services are expected to work

together when looking after someone who is in need of emergency psychiatric care. At these times there may be a need for different agencies (such as health, police or social services) to work together in order to ensure the rights and the needs of the individual are met. The report on PEPs was undertaken between 2019 and 2020, and published in June 2020. Part of this work explored the type of information provided in the PEPs regarding children and young people in the health board area. Results were mixed in relation to children and young people with substantial room for improvement in many of the PEPs³².

6.5 A key element of Commission's activity in supporting 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. 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.

In 2016 when the Committee on the Rights of the Child (CRC) last reviewed the progress that the UK reported on in implementing children's rights as defined in the UNCRC, it expressed concern, in its concluding remarks, about the number of children and young people in Scotland who are admitted to adult mental health wards and far away from home. The CRC made recommendations (to Scottish Government since health is a devolved power) that progress to eliminate admissions of children under the age of 18 to adult wards should be made. 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's 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. We remain concerned, however, at the lack of age appropriate intensive psychiatric care provision in Scotland for children and young people; we continue to draw attention to this lack of facilities in our annual young person monitoring reports and in any relevant responses to consultations.

³² https://www.mwscot.org.uk/sites/default/files/2020-06/A%20review%20of%20Psychiatric%20Emergency%20Plans%20in%20Scotland%202020_0.pdf

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).

- 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 with 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 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. In the past, concerns have been raised with us about difficulties that some children attending private schools have had to educational psychology services once they are back home in the community, following discharge from hospital. We have also looked into cases where complaints have been made to us during our visits about any limitations on the available school curriculum provided within in patient settings.
- 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 education provision 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's and young people's rights to access education as part of our monitoring duties.
- 7.3** We try 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). We also try to ensure that children and young people have access to, and can participate in, a range of arts and cultural opportunities (Article 31) while they are in hospital. When we undertake our annual visits to Scotland's three specialist adolescent mental health units and the national child inpatient unit, we always ask specifically about the ability of children and young people to access recreational facilities and their access to outdoor space. We also ask about this when we are gathering information about a child or young person who has been admitted to a non-specialist ward. In the past three years, we have made recommendations in a number of our visit reports about access to recreation and we report on access to age appropriate recreational activities for children and young people as part of our annual monitoring of non-specialist admissions.

8. Special protection measures

Here, we set out 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).

- 8.1** In the past, children and young people admitted to adult wards have told us that they sometimes feel unsafe on the ward or have been exposed to conversations about drug use, for example, that they would have preferred to avoid. Since our recommendations (following the implementation of the MHA) to services to provide single room accommodation to young people on adult wards, and to strongly consider the use of enhanced observations/individualised interventions to support a young person feeling safe on the ward, we welcome the fact that these protections are now available for many 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 young people are now accommodated in a single room (93% in 2019/20) and are placed on enhanced observations/individualised interventions (74% in 2019/20) when an inpatient on an adult ward.
- 8.2** The Commission visits prisons to find out about the care and treatment of individuals with mental health needs in the prison service. A themed visit to individuals in prison, including visits to young people placed in HMYOI Polmont, was to have taken place in the spring of 2020, but had to be postponed due to the COVID-19 pandemic. This will take place at the earliest opportunity.

Reflections and next steps

While the Commission does not have a remit to provide services to or directly support children and young people, we do aim to ensure that children's rights are protected and promoted in Scotland.

Our work with health and social care services aims to ensure that their work provides good standards of care and treatment, reflects children's and young people's mental health needs and respects the rights of children and young people and their families. We also advocate, at a national level, 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's and young people's rights and we continue to communicate the importance of improved mental health and capacity legislation that better reflects these rights.

Looking forward

The Commission values the views of children and young people and their families and believes these views are essential in helping to shape services that meet children's and young people's needs and respect their rights. We are committed to continuing to take a strategic approach to improving the ways in which we can gather those views and further embed our duties and commitment to children's and young people's rights in our work. We are very grateful to the young people in Dumfries and Galloway for their comments and feedback regarding this report and our work in promoting and furthering children's rights. We are keen to build on these links and explore how we may strengthen such relationships, and we intend to use those comments and the feedback to shape our next Children's Rights Report so that is more engaging and attractive for children and young people to read.

Over the next three years, our priority will be to continue 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's and young people's rights, with the more general work of the Commission.

Our actions will remain coordinated through our Children and Young People group at the Commission in order to maximise our impact.

Continued collaboration with other public bodies and other key stakeholders will also be crucial to ensure we make the most of our resources in the future and have the opportunity to enrich and contextualise our knowledge and experience as it develops.



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