3.6.25. Parliamentary Committee Report

Mental Welfare Commission for Scotland

Background

The Mental Welfare Commission for Scotland, in its current format, was established under the 1960 Mental Health Act and came into existence on 1 June 1962, replacing the General Board of Control which can be traced back to 1859. One of its primary roles in 1962 was the discharge of patients from large, long stay institutions.

Much has changed since 1962, but the core focus of the Commission remains protecting and promoting the rights of people with mental ill health, learning disability, dementia and associated conditions.

We are an independent health body accountable to Scottish ministers and have a number of statutory duties defined in Scotland's mental health and incapacity legislation (the Mental Health (Care and Treatment) (Scotland) Act 2003 (MHA) and the Adults with Incapacity (Scotland) Act 2000 (AWIA)). We welcome the Scottish Mental Health Law Review's (SMHLR) recommendations to extend our role and reach further. https://webarchive.nrscotland.gov.uk/20230327160310/https://cms.mentalhealthlawreview.scot/wp-content/uploads/2022/09/SMHLR-FINAL-Report-.pdf.pdf

We are governed by a Board, which sets the strategic direction for the Commission. Board members bring a wealth of experience in using and managing mental health and learning disability services.

We have two committees which report to our board, the Audit, Performance and Risk Committee and Advisory Committee and we are about to start engagement and consultation on our next strategic plan 2026-2029.

We operate as an independent voice, working across the age range from children to older adults and are regarded as a 'watchdog'. The Commission is not an inspectorate or regulatory body, nor is it a complaints body as such and it has limited powers of direction.

The Commission is listed as a scrutiny body in the Public Services Reform (Scotland) Act 2010. Section 114 of this Act requires the scrutiny authorities listed in schedule 20 to co-operate and co-ordinate their activity with each other and, where appropriate, the Scottish Ministers.

Our day-to-day work involves Commission officers who hold respective professional registration as mental health nurses, social workers (mental health officers) and doctors (psychiatrists) visiting people in specialist mental health and learning disability care settings, with powers to access documents. We are committed to extending our reach with support from people with experience of services/peer support/caring. When we meet individuals, we offer them a private opportunity to talk and hear about what matters to them. We also talk to their families or carers if they wish, and to staff.

Much has changed in our understanding of, our attitudes towards and the language we use about mental ill health over the years. However, there remains continuity in that the Mental

Welfare Commission has always approached its work with children, adults and older people starting from the individual first.

Corporate Arrangements

Whilst the Commission is classified as an independent NHS body, staff remuneration follows the Scottish Government pay policy and gains approval from Scottish Ministers except for the medical consultants within the Commission whose arrangements are as per NHS. Our annual accounts follow NHS processes.

Our core budget was £4.6m 2024/25 last year, excluding temporary monies in relation to short term/time limited projects. We await confirmation of our annual budget allocation for this year (2025-26).

We have a total staff count of 79 people, 69% of whom are in frontline roles.

We are part of Scottish Government's corporate shared services programme, which has replaced aging Scottish Government IT systems for HR and Finance with Oracle Cloud; this means increased alignment of financial processes and enhanced controls, with more sophisticated financial reporting expected.

Our office space was reduced by 45% in 2019 with desk space now available for 36 staff. We are tenants of a building, the landlord of which is the Scottish Legal Aid Board, and we share meeting/conference rooms with other tenants. We have only one office despite our Scotland wide remit and are committed to effectiveness and efficiency as per one of our strategic objectives.

Functions of the Mental Welfare Commission for Scotland

The Commission fulfils its statutory duties by focusing on five main areas of activity which are described and defined in the MHA and AWIA:

- **Visiting** people receiving care or treatment, including people in hospitals, registered care settings, prison and, increasingly, in the community.
- **Monitoring** the operation of the MHA and AWI and publishing statistical reports.
- **Investigation** of cases where there is evidence of neglect, ill-treatment or deficiencies in care and treatment, making recommendations for improvement based on findings and publishing the most significant reports for learning across Scotland.
- **Provision of information, advice and guidance** to people with mental health problems or learning disabilities, their families and carers and professionals, including via an advice telephone line.
- **Influencing** the development of mental health and capacity related policy, strategy and legislation.

1. **Visits**

The Commission is the only external body in Scotland which regularly undertakes visits to people in specialist mental health and learning disability NHS care settings, with powers to obtain access to individuals and their care records. The Commission operates at the interface

of law, care and ethics and thus brings a unique perspective and added value as a body of expertise influencing care and treatment in the field of mental health.

Section 13 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (MHA) describes the visits to patients with mental health difficulties that the Commission is authorised to undertake. These include:

- detained patients or patients who are compulsorily treated under the MHA or Criminal Procedures (Scotland) Act 1995 (section 13(1)).
- patients subject to guardianship and intervention orders or who have a power of attorney under the Adults with Incapacity (Scotland) Act 2000 (AWIA) (section 13 (2)).
- voluntary patients receiving treatment or using facilities within NHS hospital facilities, independent hospitals, a care home, a young offenders institution or prison, a secure care accommodation or a community facility provided by the local authority to support the mental health of individuals (section 13 (3)).
- Section 13 (5) describes the purposes of these visits are for patients to meet with a Commission visitor and discuss any concerns they may have, for the Commission visitor to assess whether the requirements of patients under the MHA or AWIA are being met and, when the facility being visited by the Commission visitor is one of those described in Section 13 (3) to conduct an assessment of the suitability of the premises in relation to those patients using them.
- When the Commission visits, it offers the individual (and in some cases family carers and advocates) a private interview, reviews case files and documentation regarding any compulsory measures, and raises any issues regarding the quality of care and support with the service.

The Commission's regular visits to people in hospital, care homes and prisons are a key part of its role as a member of the UK's National Preventive Mechanism. This was established in 2009 under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

2. Monitoring

Under sections 5 and 6 of the MHA, the Commission has general duties to monitor the operation of the MHA and the AWIA and report on its findings. Section 19 of the MHA allows the Commission to publish statistics that reflect how it has discharged its statutory functions.

The Commission is notified of most interventions under the MHA as well as applications for welfare guardianship under AWIA. The Commission collates, analyses and publishes this statistical information on an annual basis, describing patterns of activity and showing trends that allows an overview into how mental health legislation is being used across Scotland and how its use is changing over time or within particular patient groups.

Our monitoring work includes the admissions of children to non-specialist wards and we report on these findings annually. Our last report was published in November 2024.

(www.mwcscot.org.uk/sites/default/files/2024-11/ChildrenAndYoungPeopleMonitoringReport_2023-24_0.pdf).

3. Investigations

Under section 11 and 12 of the MHA and section 9(1(d)) of the AWIA, the Commission has powers to investigate cases where there has been a deficiency of care and treatment, neglect and/or ill treatment or where there have been complaints about the exercising of powers relating to the welfare of people who are subject to guardianship or who have a power of attorney.

Very often the Commission will seek to ensure that matters of concern are being properly addressed locally. This is to ensure that those who are providing care and often in the best position to address concerns and remedy difficulties are promptly involved in any matter raised, in a way that the Commission cannot. The Commission, where indicated, makes further enquiries directly with services and in some cases of serious concern where we remain dissatisfied, the Commission may undertake a formal investigation and publish an anonymised investigation report with recommendations to ensure that lessons are learned locally and more widely. These can be highly influential in promoting positive change.

It is important to note that not every instance of deficiency of care can be investigated by the Commission for a variety of reasons including finite resources. However, we have a process to filter those cases which are the most significant and are thought to be the most beneficial for Scotland-wide learning.

A couple of our reports are provided below:

- Mr E Investigation Mr E 2024.pdf
- AB InvestigationIntoTheDeathOfAB_20230803.pdf

4. Advice and Guidance

The Commission has a statutory role in providing guidance in relation to its function and these duties are described in section 9 and 10 of the MHA and section 9(1(g)) of the AWIA. The duty includes publication of information and guidance regarding the Commission's functions including findings obtained from investigations and visits. In 2010 we began publishing our reports from visits to local hospital wards which had previously remained private for the attention of the hospital managers. This enabled access to the findings from our visits by the general public.

In 2024-25 we received 3455 calls to our advice line and provided advice. Audit of this advice showed an accuracy of 98.5% against a target of 98%.

We also regularly provide new and revised guidance (examples below) to support best practice:

Nutrition by artificial means (18 July 2024)

Consent to treatment good practice guide (5 August 2024)

AdvanceStatements-2024.pdf (5 September 2024)

EasyRead-AdvanceStatements.pdf (5 September 2024)

Good Practice Guide When and how to recall a Welfare Guardianship (19 September 2024)

Supported decision making good practice guide 2024 (2 October 2024)

In addition, we compiled one new advice note:

Cease and vary (20 September 2024)

Using some of our other good practice guides on Rights, Risks and Limits to Freedom, Seclusion, Specified Persons, Right to Treat, Medical Treatment under Part 16 and Nurses Power to Detain, as well as our guidance on Care Planning, we ran a series of three webinars this year (2024-25), where there were 606 attendees from a wide range of professional backgrounds.

In May 2025, we will be publishing revised good practice guides in relation to SIDMA and eating disorders, Decisions in technology, Rights risks and limits to freedom and Specified persons.

5. Influence and challenging

In 2024 we hosted an event entitled "From shared ambition to delivery" which offered an opportunity to consider and take forward the recommendations of the work of the Scottish Mental Health Law Review (SMHLR). We continue to respond to consultations and attend parliamentary committees to give evidence when requested to do so.

We have recently co-chaired a meeting with NHS Education for Scotland (NES) for leaders with Child and Adolescent Mental Health Services to discuss the implications for service development and practise as a consequence of the UNCRC (Scotland) Act 2024. Again, with NES we are collaborating on an AWI project to improve the knowledge of staff across the NHS and social care field in Scotland.

The 2024 Scottish Government Mental Health Scrutiny and Assurance Evidence review recommended that the Mental Welfare Commission coordinate a mental health scrutiny group with partners to avoid duplication and reduce the burden of scrutiny, however defined. It was recognised by both this review and the Scottish Mental Health Law Review (SMHLR) recommendation 11.4 that the Commission, with its unique focus and expertise, was best placed to do this. We look forward to working in partnership to deliver on this recommendation as we believe this coordination is central to driving up improvements in scrutiny and collaboration.

In conclusion

Over and above our work with individuals, our key organisational relationships are with the Mental Health Tribunal for Scotland (MHTS), Office of Public Guardian (OPG), Scottish Independent Advocacy Alliance, Health and Social Care Partnerships, Local Authorities and Health Boards.

As noted previously, we have few powers to order things to happen, but the Commission has significant influence and we rely on this. However, we understand feedback that we should have more 'teeth' and would welcome additional powers, for example, to direct actions in the exceptional circumstances where this may be necessary.

The SMHLR made numerous recommendations with regards extending the Commission's role and powers, all of which we welcome given its three-year evidence base and we are keen for movement on next steps on how these might be realised if agreed.