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CORPORATE REPORT

Introduction

Our strategic plan outlines the role and purpose of the Commission, sets out our main areas of work and identifies the actions we intend to take to achieve our aims. This strategic direction will allow us to fulfil our statutory duties in a way that influences and challenges service providers and policy-makers to provide mental health and learning disability services that are lawful and promote the rights and welfare of individuals. It also affirms our aim to empower individuals and carers by ensuring that they know their rights and can expect service providers to respect them.

We have aligned our strategy with the relevant areas of the Scottish Government's National Performance Framework and more specifically on commitments set out in the mental health strategy and other relevant government policy. In addition we have clearly outlined our accountability as a public body and identified measures and targets to indicate value for money within the resources allocated to us.

We have consulted stakeholders, through our Advisory Committee, on this strategy and ongoing priorities in our work. The feedback we receive from our stakeholders is crucial to us in making decisions about our work. It gives us confidence that we can deliver our statutory duties over the next five years.

The National Confidential Forum (NCF) is set up under the Victims and Witnesses (Scotland) Act 2014 as a committee of the Commission. The Commission is responsible for the work of the Forum with the Forum Head reporting to the Chair. The NCF will operate independently from the Commission but will utilise business and management functions of the Commission. The strategic and business plans for the NCF will be approved by the Board. This strategic plan therefore does not cover the governance or operational arrangements of the NCF.

What we do

We protect and promote the human rights of people with mental health problems, learning disabilities, dementia and related conditions.

We do this by

- Checking if individual care and treatment is lawful and in line with good practice
- Empowering individuals and their carers through advice, guidance and information
- Promoting best practice in applying mental health and incapacity law
- Influencing legislation, policy and service development

Context of Strategic Plan

The Scottish Government has a single Purpose – to focus Government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. The National Performance Framework sets out how the Government will achieve and measure its Purpose. Progress towards the Purpose is tracked by 7 Purpose Targets and it is supported by 16 National Outcomes and 50 National Indicators, covering key areas of health, justice, environment, economy, and education. We aim to align our work to these objectives.

In any successful country, if all its citizens are to flourish, it is imperative that there are systems in place to safeguard the most vulnerable in society, those without a voice and those that may be detained or compelled to take treatment against their will. The Commission is an important part of that system of safeguards set up under mental health and incapacity legislation. We have a particular interest in the rights and welfare of people whose liberty might be restricted by the use of legal processes such as guardianship, detention and compulsory treatment.

The Commission is an independent body set up under mental health law. Our powers and duties are outlined primarily in two pieces of legislation – the Mental Health (Care and Treatment)(Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000. Our strategy is based on these statutory duties. While maintaining our independence in the work that we do, we are accountable to the Scottish Parliament for the resources we use and contributing to the overall performance framework.

There is an increasing focus on mental health and wellbeing and mental health services at both the Holyrood and Westminster Parliaments. We welcome the introduction of a Scottish Ministerial post for Sport, Health Improvement & Mental Health - the first time mental health has been specifically named as a Ministerial role. We aim to influence policy development and service delivery and to promote rights and welfare by meeting regularly with Ministers and officials to inform them of our views and the findings from our work.

Human Rights and Equality Frameworks

Our statutory remit is focussed on the rights and welfare of individuals. Our work focuses on ensuring that individuals' needs are being met and rights respected. We aim to empower individuals to know and understand their rights with respect to mental health and learning disability care and treatment. As such we sit within the overall frameworks for human rights and equality. We endorse and will work with the Scottish National Action Plan for Human Rights published by the Scottish Human Rights Commission in 2013. We will highlight cases where we think human rights and equality legislation are not being complied with in our reports on visits and investigations. We will raise issues of individual rights in our work promoting the principles of mental health legislation, and we will work with others to embed an understanding of human rights in mental health care.

Social and demographic factors

As with all public policy, our strategy needs to take into consideration social and demographic changes.

- People are living longer and the proportion of older people in the population is increasing
- There is a continuing increase in the number of people with dementia. Alzheimer Scotland estimates that there are currently around 82,000 people with dementia in Scotland and that this figure will double over the next 25 years.¹
- Children and adults with learning disabilities are living longer
- There is an increase in mental illness at times of economic downturn²
- There is a high incidence of alcohol and drug problems in the population
- The population of Scotland is increasingly diverse and services need to be culturally competent
- Policy developments in personalisation and home based support increase responsibilities of unpaid carers and families. Their needs and how services communicate with them must be considered

All of these issues may lead to an increasing use of mental health and incapacity legislation.

There is a strong body of evidence to show that people with mental illness and learning disability do not live as long as the general population. Their health is generally poorer. There have been a raft of policy developments to address these health inequalities, but the impact on inequality of outcome has been limited to date.

Scottish Government Mental Health Strategy

¹ <http://dementiascotland.org/news/files/MEDIA-RELEASE-new-dementia-prevalence-stats-April-20112.pdf>

² International Psychiatry Volume 10 number 1 February 2013 "Thematic papers – economic crises and mental health

The Scottish Government's mental health strategy finishes in 2015. We aim to influence the development of the next strategy and in particular to ensure rights are embedded in mental health care. In partnership with the Scottish Government and Scottish Human Rights Commission we have developed an outcomes model for ensuring rights based care. In 2015 we will develop this model further to identify gaps in ensuring rights based care. We hope that this work will inform the next mental health strategy.

We will also take forward our own work in contributing to rights based care over the next three years. This will include a patient's right care pathway which identifies opportunities in the care journey to inform and empower patients; piloting an approach as part of the Patient Safety Programme to give people useful information about their rights at key stages; and work on advance statements and supported decision making.

Scottish Government Learning Disability Strategy (The Keys to Life)

We are also uniquely placed to examine the impact of government policy on the care and treatment of individuals with learning disability. The Scottish Government published its new strategy, "The Keys to Life" in June 2013. This strategy follows on from, and builds on, the successes of "the Same as You" which focussed on improving the lives of people with learning disability and shifting the balance of care to people living in the community. The new strategy focuses on the health of individuals with learning disability with the aim of reducing health inequalities. We will continue to highlight areas of inequality and lack of focus on rights for people with learning disabilities through our visits and investigations.

Scottish Government Dementia Strategy

We work closely with the Scottish Government and other agencies on the implementation of its Dementia Strategy 2013 - 2016. Again we are uniquely placed as we are able to visit people with dementia in both health and social care services and subject to mental health and/or incapacity legislation. From our visit reports we can inform the Government and services on areas of the strategy that are working well or not working so well. We do have some concerns about the level of medication some people with dementia receive in hospital and other settings, and whether practitioners, including GPs, are fully aware of the procedures for making decisions for people who may lack capacity.

NHS Scotland's Healthcare Quality Strategy and Performance Targets

The quality strategy ([link](#)) has three quality ambitions – that all healthcare be safe, effective and person centred.

The NHS in Scotland sets our performance targets for NHS Boards – HEAT targets, of which there are four specific to mental health.

By visiting individuals we can comment on the compliance to the quality strategy and implementation of targets. We will raise any issues with the local service in the first instance.

Other Relevant Government Policy

We consider other relevant government and service policies, such as recovery and recovery oriented practice, patient safety programme, and national carers' strategy, when we visit individuals. We will highlight to local services any aspects of their care and treatment of individuals that do not fit with these policies.

Legislative and Policy Developments

Because of its focus on the rights and welfare of the individual and its overview of the operation of mental health legislation the Commission is in a unique position to champion the cause of mental health and learning disability policy and provision of services. We will continue to highlight areas of concern to the Scottish Government and to contribute to consultations on legislative developments. The main areas of legislative development that will impact on this strategy are:

- Amendments to the MHA 2003

The Mental Health Bill is scheduled to complete its passage through Parliament in 2015. We have made several recommendations for amendments to address human rights standards and improve the operation of the Act. We will continue to work with the Scottish Government on proposals. Once implemented we will monitor the operation of the changes to ensure that individuals' welfare is promoted and rights respected.

One of the proposed changes involves the Commission holding a register of advance statements. Over the next three years we intend to promote the use and benefits of advance statements throughout Scotland. We will do this in partnership with our stakeholders.

- Tribunal Reform

In 2012, the Scottish Government consulted over a new structure for tribunals in Scotland. We facilitated a round table discussion on this consultation as it applied to the Mental Health Tribunal for Scotland. The Tribunals (Scotland) Bill was passed by the Scottish Parliament in March 2014. The Scottish Government has committed to there being a dedicated mental health chamber within the new Tribunal structure. This will be specified in secondary legislation.

- Amendments to the AWI 2000

In 2014 the Scottish Law Commission (SLC) published their report on the review of the Adults with Incapacity (Scotland) Act 2000. We have previously set out proposals for reform through a system of graded guardianship, which we will review in the light of the SLC proposal. We will work with the Scottish Government and SLC to ensure appropriate proposals are taken forward into the legislative programme that take account of the Cheshire West ruling and the UN Convention on the Rights of Disabled People.

- Self directed support

The Social Care (Self-directed Support) (Scotland) Act 2013 allows individuals to arrange some or all of their support instead of directly provided care services from the local authority social work or housing departments. From our visit work and telephone advice service we have had some concerns raised as to how self directed support is working for people with mental illness and learning disability. We will monitor how this policy impacts on the safety, choice and control of individuals.

- The Public Services (Joint Working)(Scotland) Act 2014

The NHS and local authorities, working in partnership with the third and independent sectors, are responsible for the integration of health and social care services. Integration plans are required for adult services and it is then up to the local integration boards to decide which other services are included. We welcome the integration of services in principle. However over the next five years we do see it as a significant area of concern both for the Commission and for health and social care services in general. For us it is not yet clear where accountability lies in each area for which services and who we will need to communicate with. For the new services there is a risk that people will fall through the gaps of responsibility until new procedures are bedded in. In particular we have concerns about the transitions from children to adult services and adult to older peoples services, depending on which services are included in the local integration plans. There is a requirement for strong and focussed leadership in these services during this period of change.

- Welfare Reform

From our visits to individuals and information from our telephone advice line we are aware of anxieties over welfare reform. There may be an additional burden on local services whilst the benefits reform process beds down. We are concerned that vulnerable people may be more at risk of poverty and homelessness.

- Children and Young Peoples' Act 2014

The Act asserts the right to early learning, coordinated services, a "named person" for every child and extended assistance for individuals leaving care. It places the duty of "corporate parents" on relevant organisations including the Commission. We will develop an annual plan to implement our duties. We are interested in the potential impact on young people moving to adult services.

- Other public service reform including justice system

A range of policy developments, including the creation of a single police force, have implications for people with mental health problems and learning disabilities who come into contact with the justice system. We are particularly

concerned about how the system responds to people in crisis: including the use of places of safety by the police, the operation of local psychiatric emergency plans, the response when people go missing from services; and the quality and consistency of the appropriate adult system. We will work with Government and health and justice agencies to support a more co-ordinated and effective response to these issues

Joint Working with Other Inspection Bodies

Healthcare Improvement Scotland is responsible for the inspection and improvement of health services and the Care Inspectorate responsible for inspection and registration of care services. Our remit covers individuals across both sectors. Where issues about individual care highlight problems in service availability, delivery and quality we raise those concerns with the relevant service provider and, where appropriate, the relevant regulatory bodies. We work closely with both of these agencies to discuss issues of concern, and where appropriate, carry out joint working to bring about improvements. Over the next five years we intend to work more closely with both of these agencies including a programme of joint visiting, and better sharing of knowledge.

We are part of the UK's national preventative mechanism (NPM) to visit places of detention and monitor the treatment and conditions of detainees. This is set up under the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

We will work with other NPM members to promote effective safeguards for people subject to detention, and to co-ordinate activity in priority areas, such as the use of seclusion or isolation, and *de facto* detention.

Our strategy

The Commission's powers and duties are outlined primarily in two pieces of legislation – the Mental Health (Care and Treatment)(Scotland) Act 2003 and the Adults with Incapacity (Scotland) Act 2000. Our strategy is based on these statutory duties.

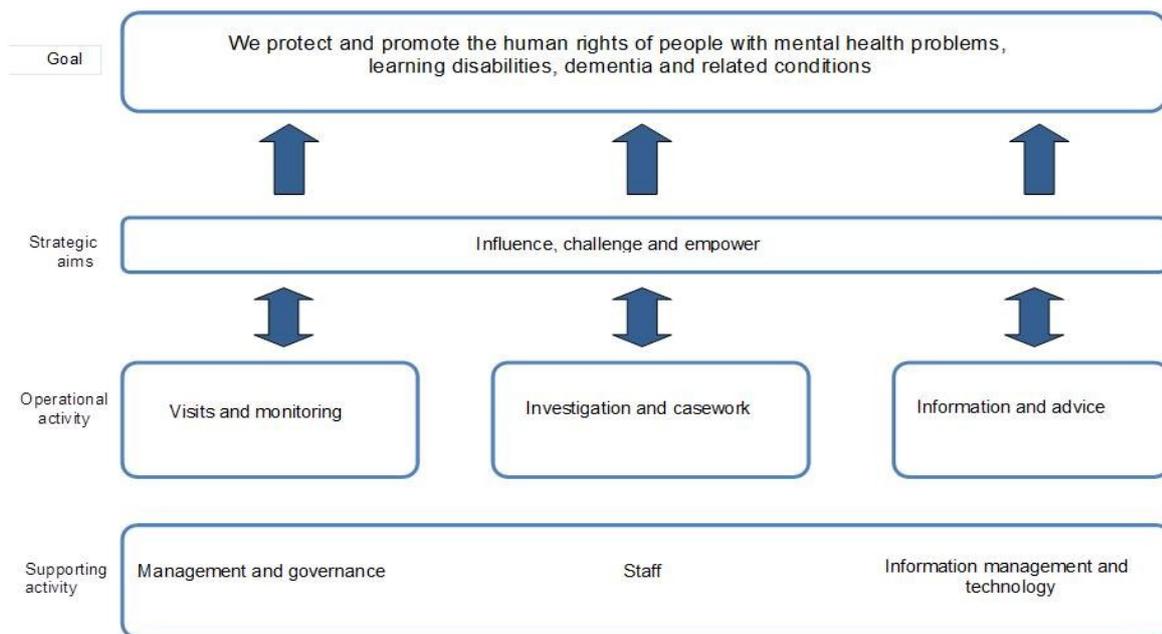
All of our work has the strategic aim of influencing and challenging service providers and policy-makers to provide mental health and learning disability services that are lawful and promote the rights and welfare of individuals. We make recommendations to local services based on our findings. We also use this information to make national recommendations to all health and social care services and Scottish Government.

We also aim to empower individuals and carers by ensuring that they know their rights and expect service providers to respect them.

In order to achieve this we have grouped our operational activities into four main categories

- 1) Influencing and empowering
- 2) Visiting and monitoring
- 3) Investigation and casework
- 4) Information and advice

The strategy map below outlines this in simple diagram although much of the work crosses over the different strands. For example when we visit an individual we may end up giving information and advice to both the individual and the service or may end up doing some further investigatory work if we have concerns about an individual's care and treatment.



Influencing and Empowering

We are committed to working with others across the system to embed human rights in mental health care. During 2015 we will, in partnership with the Scottish Government and Scottish Commission for Human Rights, finalise our outcomes based model for rights based care. This will identify the work currently being undertaken to promote and embed rights based care and identify gaps where action is needed. We aim to influence the Scottish Government to include this work into its new mental health strategy.

We will progress our own contribution to these outcomes, which is likely to include the development of a 'patients' rights care pathway' which identifies opportunities in the care journey to inform and empower patients; piloting an approach as part of the Patient Safety Programme to give people useful information about their rights at key stages; and work on advance statements and supported decision making.

We will continue to influence all relevant law and policy by responding to consultations and raising issues with Scottish Government and service managers where we think policy is not being implemented or needs review.

We aim to increase service user and carer involvement in our work. We have appointed a Director with responsibility for engagement and participation. During 2015 we will recruit two part time posts; one to be filled by an individual with experience of mental health services and the other by a carer. These posts will work to broaden the engagement of service users and carers in more aspects of our work. For example we intend to facilitate focus groups before each of our themed visits to get the views of individuals and/or carers who have had recent experience of

these services. We may also use the focus group approach in our investigation work to determine if issues raised in one service are replicated across the country and therefore determine where an investigation might have most impact.

We will continue to discuss and get advice on all of our work from our Advisory Committee, made up from a wide range of relevant stakeholders.

Visiting and Monitoring

1 One of the best ways to check that people are aware of their rights and are getting the care and treatment they need is to meet with them, find out their views and check their care and treatment are lawful. We visit individuals in a variety of care settings and in their own homes. Some people are subject to mental health or incapacity legislation and others are not. More information on the different ways we visit individuals can be found on our website

http://www.mwcscot.org.uk/media/65154/our_visiting_work.pdf

We produce reports with recommendations for improvements after our visits. These may be national reports available on the website or local reports to individual services. We aim to publish these local reports from the end of 2015. We follow up on our recommendations to services and may escalate issues to senior management or to Scottish Government if we do not think improvements have been made.

By visiting individuals we aim to achieve improvements in services, increased awareness of the delivery of policy targets and promotion of the rights-based principles of mental health and incapacity legislation. We can demonstrate improvements in services and policy and legislative changes as a result of our work. We do this through our annual reports published on our website.

Over the next five years we intend to visit more individuals receiving care and treatment in the community. It is more resource intensive for us to do this type of visit as we may only see one person at each location. From 2015 we have reduced our target for the number of individuals visited each year from 1,900 to 1,500.

For our local visits to individuals receiving services we will ensure that 25% of these are unannounced.

2 We check the paperwork and records of people who are being cared for or treated under mental health and incapacity legislation. We receive over 35,000 forms and other notifications per year related to this legislation. If we think that care or treatment could be unlawful we contact the care provider and ask them to remedy the situation and to inform the individual concerned.

We carry out monitoring projects on specific areas of mental health or incapacity legislation. For example, we monitor NHS Boards' duties to provide age appropriate care for young people and advance statement overrides.

We provide annual statistical reports on the use of mental health and incapacity legislation. These identify trends or differences in how the legislation is being used across Scotland. These can be found on our website at

<http://www.mwscot.org.uk/publications/statistical-monitoring-reports>

Through our monitoring, statistics and analysis we aim to improve practice in the use of mental health and incapacity legislation and to encourage services to review their own practice in light of the differences highlighted across Scotland.

3 We administer the systems that provide safeguards for individuals if they are to be treated with medication without their consent. The Commission appoints Designated Medical Practitioners (DMPs) to provide a second opinion on proposed treatments. Our information leaflet on the role of DMPs gives more information about this. We also provide safeguards for all individuals who are offered neurosurgery for mental illness. From 2015 patients from Scotland will be treated in England and we will need to develop a memorandum of understanding with the Care Quality Commission.

<http://www.mwscot.org.uk/media/52238/The%20Role%20of%20the%20Medical%20Practitioner.pdf>

Investigations and Casework

We have powers under the MHCT Act 2003 to investigate and undertake formal inquiries where we believe that something may have gone wrong with a person's care or treatment.

Our investigatory work is very broad. It includes all actions to review individuals' care and treatment, ranging from basic action to address poor or unlawful treatment, case review and major investigation.

We may follow up on cases from visiting individuals, from a call to our information and advice line or if we see something in an individual's paperwork that concerns us. Most of the time we deal with the issues by talking or writing to people outlining our concerns and asking for certain actions to be taken. This is what we call casework. This highlights rights based care and treatment at a local level and leads to improvements in care and treatment for individuals.

Where we have greater concerns about an individual's care and treatment we may ask the service to send us all of the individual's files and we review the case in detail. We may speak to the individual concerned and the staff involved for clarification of some issues. We will write to the service with our views and recommendations.

In some cases where we have serious concerns about an individual's care and treatment **and** think that the case highlights wider concerns within the health, social care or justice system we may decide to do a major investigation. We will review the case notes, interview the individual where appropriate and members of staff and produce a comprehensive report with recommendations for improvements. We will always discuss the report with the individual, where appropriate, and relevant family members. We do, on average, two of these investigations a year.

These major investigation reports have led to improved quality of life for individuals, improvements in services across the country and changes to policy and legislation.

Over the next three years we aim to improve our investigations procedures including consideration of alternative ways to carry out investigations. We will also work to establish a more robust cross-agency system for the investigation of suicides, homicides and other serious incidents involving people who are receiving mental health or learning disability services.

Information and Advice

We strive to be independent experts in applying best ethical and legal practice in care and treatment. The application of mental health and incapacity law to individual cases can be complex especially when practitioners only use the law occasionally. We aim to provide information for individuals and practitioners that explain the law and good practice in an accessible way. We do this through:

- Our information and advice telephone helpline
- Publishing and updating good practice guides in consultation with individuals and other relevant stakeholders
- Publishing an Advice Note on the operation of mental health and incapacity legislation
- Providing excellence in practice seminars
- Publishing information in leaflets and the website
- We will develop new approaches to inform users and carers about their rights

Key Performance Indicators

We will report our performance against the following key indicators in 15-16, and appropriately updated indicators in future years.

- 1 In our visit programme each year, we intend to:
 - a) Visit at least 1,500 individuals
 - b) Complete 25% of our local visits in the unannounced format
- 2 We will produce statistics and analysis on the use of mental health and incapacity legislation on time, within six months of the end of the year
- 3 We will complete at least two investigation reports by end of March 2016
- 4 We will assess samples of our telephone advice and aim for at least 97.5% of all our advice to be accurate
- 5 We will produce three new good practice guides
- 6 We will follow-up all our recommendations to services arising out of local visits and achieve satisfactory responses in no less than 90% of cases within the agreed timescale. We will publicly report upon this.

Supporting Activity

Our core operational activities are supported by a sound system of corporate governance. This ensures clear leadership and direction for the organisation and

transparent decision making. Staff understand our goals and are appropriately trained, engaged and developed to deliver them. Our work and resultant decision making is supported by a robust risk management strategy.

We will strive to demonstrate the following behaviours to ensure we remain efficient, effective and accountable:

- Expertise: experienced, knowledgeable, hungry for evidence, adept with analysis
- Connected: network at national and international levels
- Authentic and trustworthy: connected to stakeholders, speak plainly and do what we say we will
- Proactive: seek feedback, innovate and improve
- Accountable: set and measure goals and welcome challenge
- Resilient: able to deal with things that happen

Five Year Financial Plan

We are funded through a grant in aid from the Scottish Government Health Department – Health and Social Care integration Directorate. We produce annual accounts in line with the National Health Service (Scotland) Act 1978, contract an internal audit function and are audited through Audit Scotland.

Our budget for 2015/16 is £3.6 million. The Commission's resources are limited and we will continue to monitor how we are using these resources to ensure we achieve our strategy in the most cost effective and efficient way that demonstrates value for money to our stakeholders.



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