



## Investigation by the Children and Young People's Commissioner Scotland

This document provides notice that the Children and Young People's Commissioner Scotland ("the Commissioner") intends to exercise his powers under section 7 of the Commissioner for Children and Young People (Scotland) Act 2003 ("the 2003 Act"), as amended by Part 2 of the Children and Young People (Scotland) Act 2014, to conduct an investigation into the following subject:

### *Children and Young People's Mental Health*

As such it fulfils the Commissioner's duties under section 8 of the 2003 Act to bring the investigation to the notice of persons likely to be affected by it. In the Commissioner's judgement, these persons are those set out in Appendix A.

### **Statement of legal compliance**

I have determined that this investigation falls within the scope of my investigative powers under section 7 of the 2003 Act and in particular is permitted under section 7(3) of that Act.

**Children and Young People's Commissioner Scotland**

27 June 2022

## **Investigation Terms of Reference**

### **Subject**

Children and Young People's Mental Health

### **Involvement of the Commissioner's Young Advisers Group**

The Commissioner's office has assembled a team of Young Investigators to inform and lead the investigation process. They will work together to explore and talk about the issue of mental health, the impact of Covid-19 on children and young people's mental health and how this impacts on their rights.

They are working with the Commissioner's Advice & Investigations and Strategy teams to explore issues around children and young people's mental health and the services that are provided.

They will exercise the Commissioner's legal investigation powers to ensure they can access the evidence they need to make recommendations on what needs to change.

They expressed the view that they wanted to focus on school counselling, and consider whether and to what extent the current model is sufficient to deliver a rights-based approach to mental health provision given the escalating need post-pandemic.

### **Rights engaged**

Article 24 of the UNCRC provides that children are entitled to the highest attainable standard of health and that no child should be deprived of access to health services. The Article makes particular reference to the importance of preventative health interventions.

In its General Comment No.15, the Committee on the Rights of the Child makes clear that "health" is to be understood as *"a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."*

The following Articles of the UNCRC are also particularly relevant:

Article 2 - all children have the rights the Convention lays out, and no child should be discriminated against

Article 3 - the best interests of a child should be a primary consideration in any action that would have an impact on them

Article 6 - children have the right to survival and development

Article 12 - children have the right to express a view and have it taken into consideration when decisions are made about them

Article 16 - children's rights to privacy and family life should be respected, which includes the right to bodily integrity

Article 23 - children with disabilities should enjoy full lives in conditions that uphold their dignity

Article 4 - the Government must use all of its powers to ensure children rights are respected, and must use all of its resources to the maximum extent possible.

## **Purpose of investigation**

- To establish the extent to which current policy and practice is meeting the mental health needs of children and young people in the aftermath of the Covid-19 pandemic.
- To identify gaps in provision and propose solutions based on the views and experiences of children and young people.

## **Reason for investigation**

Children's mental health services were in crisis before the onset of the Covid-19 pandemic in March 2020. Our office received frequent enquiries from young people, parents/carers and professionals about difficulties in accessing diagnoses and supports. A 2018 report from the Auditor General for Scotland<sup>1</sup> found that, while children's mental health was a priority for the Scottish Government, mental health services were under significant pressure; data and evidence, particularly on outcomes, were inadequate; and that a step change in Scotland's response to children's mental health was required.

In summer 2020, due to concerns about the Scottish Government's failure to properly assess the impact of its legal and policy response to the pandemic on children and young people, our office worked with the Observatory of Children's Human Rights Scotland to produce an Independent Children's Rights Impact Assessment (ICRIA).

The ICRIA was published in July 2020 and found that:

- Even though it was clear from early on that the pandemic would have significant, long-term impacts on children and young people's mental health, little had been put in place to try to mitigate these impacts.
- Fewer children and young people were being seen by medical professionals, so mental health problems may have been underdiagnosed.
- There had been serious access issues for those with a diagnosis. Face-to-face services outside hospitals closed in late March 2020, and in a UK-wide survey a quarter of children with existing mental health problems reported not being able to access support.
- Children and young people weren't always confident in finding mental health information, and usually hadn't been involved in creating it.
- In some respects, Scots law defines people aged 16 and 17 as adults, meaning some mental health safeguards may not apply to them.
- In a UK survey, 83% of those with existing mental health problems said the pandemic had made these worse.

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<sup>1</sup> [https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr\\_180913\\_mental\\_health.pdf](https://www.audit-scotland.gov.uk/uploads/docs/report/2018/nr_180913_mental_health.pdf)

The ICRIA concluded that as a result of the pandemic, many more children will require support with their mental health for some time to come. Based on its findings, it is likely that the current model of mental health provision – which was already under significant pressure and subject to wide ranging criticism - will not be able to deliver on children’s rights to the best possible standard of health in terms of Article 24 of the UNCRC. The ICRIA recommended that mental health support be seen as a universal need and that provision be reviewed and delivered on that basis.

Since that point, concerns have only worsened. In almost every interaction our office has had with children and young people over the last 18 months, mental health has been raised as a matter of serious concern. The Lockdown Lowdown survey of over 6,000 young people, conducted between September to November 2020 by the Scottish Youth Parliament, Young Scot and YouthLink Scotland, found that 38% of children and young people disagreed that they felt good about their mental health and wellbeing. Furthermore, 44% did not feel confident accessing information about support for mental health and wellbeing.

Prior to the pandemic, the Scottish Government had announced it was making funding available to local authorities to ensure that professional counselling support was available to all secondary school pupils. £12m was provided in the first year, with £16m per year thereafter. The Government is collecting data from local authorities on these services, but only a limited amount of that data is being published, making it hard for human rights bodies, journalists, MSPs and others to scrutinise effectiveness. In addition, some questions that are key to establishing the extent to which provision is rights-respecting are not part of the Government’s data collection. While the provision of counselling in schools is welcome, children and young people told us that access to school counsellors needs to be swift and straightforward, and there needs to be a consistency of approach to ensure minimum national standards of provision and quality.

Outwith schools, there is inconsistent provision of mental health services in the community, with resources in some areas focussed on CAMHS (Child and Adolescent Mental Health Services) and inpatient services. Inadequate community provision has resulted in increased and, in the absence of other services, inappropriate CAMHS referrals. Most CAMHS services were very limited from March-June 2020 so long waiting times are likely to have increased even further.

Even more alarmingly, many young people have said they can’t get help from acute services until they are in severe crisis. They may be suffering from depression or anxiety but because they aren’t having a mental health emergency, they can’t access treatment. Many talk about the length of time – years, in some cases – they can go without getting any help and how profound an effect this has on them. This appears to be even more acute a problem in rural communities.

The level of funding for children’s mental health was inadequate before the pandemic but Covid-19 has sent Scotland into an unprecedented spiral of demand. As Scotland emerges from the pandemic, there may be no more urgent task for the Scottish Government and the Parliament than to respond to this crisis.

## **Investigation Stages**

Following discussions with the Young Investigators, the investigation has been broken down into four stages.

1. Research into Local Authority approaches to provision of school counsellors
2. Round table evidence session(s) with key senior professionals
3. Interviews/survey with school counsellors about their role

#### 4. Interviews/survey with children and young people

We intend to report on each stage individually, with a summary report and recommendations at the end of the investigation.

### **Statement of Legal Compliance**

Under the terms of the Commissioner for Children and Young People (Scotland) Act 2003, as modified by the Children and Young People (Scotland) Act 2014, the Commissioner has the power to investigate:

*“whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people.”*

Local Authorities are service providers under the terms of the 2003 Act, as is the Scottish Government. The policy approach to meeting the mental health needs of children and young people can be seen as a series of decisions and actions taken by national and local government; all of which engage obligations to act compatibly with the UNCRC.

While the Government is collecting data on school counsellors, the Mental Health Investigators felt that more data was needed in order to properly assess the effectiveness of the scheme. As noted above, very little of the data provided to the Government is being published, none of it thus far disaggregated by local authority.

Use of the Commissioner’s investigation power will ensure that all local authorities provide the data necessary to scrutinise the effectiveness of counselling provision, and that all the data is publicly available.

The Commissioner’s powers of investigation are not without limit and in particular cannot be exercised where to do so would duplicate work that is properly the responsibility of another body. In this case, we have identified two bodies whose powers potentially cover this area.

Gaps in availability of services potentially fall into the remit of the SPSO which investigates complaints about maladministration or service failure. However, the SPSO can only respond to individual complaints; they cannot conduct a general investigation as proposed by the Commissioner. It is unreasonable and ineffective to expect individual children and young people to address these issues through complaints.

The Mental Welfare Commission has duties and powers to monitor compliance with the Mental Health (Care & Treatment) (Scotland) Act 2003 and the welfare parts of the Adults with Incapacity (Scotland) Act 2000. The Commission also has the power to conduct visits and investigations. However, as with the SPSO, the Commission’s investigation powers are linked to individual cases.

Given the significant rights issues raised, and the apparent lack of any other body which can legitimately address this specific matter in this way, it is the Commissioner’s view that it falls within the scope of his legal powers. The implications for national policy means that it is necessary for the investigation to be conducted formally so that evidence can be laid before the Parliament.