



## Includem's response to the Scottish Mental Health Law Review consultation March 2022

### About Includem

We are a Scottish youth support charity that works with children, young people and families to help them transform their lives. We see a world where every child and young person is respected, valued, and had the opportunity to actively participate in all aspects of society.

Includem work closely with children, young people, and their families, who are facing difficult challenges in their lives. Our trust-based, inclusive model of support is centred on the needs of each child, young person and family. We help children, young people and families make positive life choices and to transform their lives, creating better outcomes for children, young people, families and their communities.

At includem we live by our principles and values and our model is adaptable to help children, young people and families who are experiencing challenges regardless of their circumstances. We work with social services, schools, police, health and other organisations to identify children, young people and families who could benefit from our support. We're not about prescribed processes or generic programmes, we take a flexible, personalised approach informed by evidence and research, with a focus on early intervention and holistic support providing the right support by the right people when and where families need it. We work with individuals and families to co-create a package of support based on what they tell us about their circumstances, strengths, needs and goals. This makes sure their voices are heard and the support we provide is designed specifically alongside them.

Given our focus and experience we have focused this consultation response on the questions in relation to children and young people.

### Consultation Response

**Includem supports the position that all the rights of the child under UNCRC should be respected in any intervention by services, whether under the Act or through more general provision.** It is recognised that children experience mental health challenges differently to adults, resulting in needing different things from

services. This includes how their experience of poor mental health is understood<sup>1</sup>. This often results in barriers to them accessing the right care at the right time.

**Includem support the view that Article 12 of the UNCRC, the right to be heard and for due weight to be given to these views, is fundamental to accessing all other rights.** As stated in the United Nations Committee on the Rights of the Child’s General Comment No. 12 (2009) The right of the child to be heard, *“Article 12 is connected to all other articles of the Convention, which cannot be fully implemented if the child is not respected as a subject with her or his own views on the rights enshrined in the respective articles and their implementation.”*<sup>2</sup>

**Includem would therefore like this to be strengthened throughout the legislation and any subsequent practice guidance to ensure that children and young people experiencing poor mental health are afforded the space and mechanisms to be able to express a view in relation to their care and for this view to be given due weight, particularly in relation to any administrative proceedings under the Act.**

At times the tone of the consultation document implies that the child’s capacity to be involved in decision making may be affected, limited, or even negated by their presentation at the time. Includem would again point to the General Comment No. 12 (2009) which states that, *“States parties should presume that a child has the capacity to form her or his own views and recognize that she or he has the right to express them; it is not up to the child to first prove her or his capacity.”* *“States parties are also under the obligation to ensure the implementation of this right for children experiencing difficulties in making their views heard. For instance, children with disabilities should be equipped with, and enabled to use, any mode of communication necessary to facilitate the expression of their views.”* This is particularly important where a child’s liberty may be restricted under the Act. *“States parties must undertake all necessary measures to ensure that the right to be heard is exercised ensuring full protection of the child.”*

### **Rights to support**

We are in support of the proposed statutory duty to ensure the highest attainable standard of mental health and welcome the commitment of the review to develop the recommendations about minimum obligations for economic, social and cultural rights as well as education rights. **We strongly encourage the Review to work directly with children and young people with expertise by experience to develop**

<sup>1</sup> Khoury, E. (2020) ‘Narrative Matters: Mental health recovery considerations when working with youth’. *Child and Adolescent Mental Health*, 25(4), pp 273-276

<sup>2</sup> United Nations Committee on the Rights of the Child (2009) *General Comment 12 (2009): The right of the child to be heard*. Available from <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>

**these.** This is particularly important for those young people who also have expertise by experience of poverty given the established links between poverty, trauma and referral to CAMHS.<sup>3</sup>

Our experience of supporting children and young people with mental health challenges is that they frequently do not receive the services they need to recover. This is particularly important given:

- Around half of mental health problems start before 15 years of age and 75% before 18.
- Nine out of ten children who have been abused or neglected at a young age will develop a mental health problem by the age of 18.
- 10% of children and young people in the general population have a clinically diagnosable mental problem
- Almost half of care experienced children and young people meet the criteria for a psychiatric disorder, rising to 75% for those in residential homes.
- 65% of young people who have a mental health need are not currently receiving any statutory service support.
- Despite this CAMHS make up less than 1% of the NHS budget.<sup>4</sup>

For the children and young people includem have supported to leave inpatient care, all of them were on the waiting list for CAMHS support and their need and risk had escalated to the point of crisis while waiting. They felt that there was no review of their priority despite increasing concerns. This is in keeping with the findings of Audit Scotland which concluded that “children and young people are not getting appropriate mental health care and treatment until they reach crisis point”<sup>5</sup>.

We welcome the commitment to extend the duties on health boards to provide ‘such services and accommodation as are sufficient for the particular needs of [a] child or young person’ to beyond inpatient services.

We advocate for this being more than formal community-based mental health services. Our experience of supporting children and young people in acute emotional and mental distress is that clinical settings do not always work for children and young people, particularly those who have experienced trauma. Research has shown that children and young people who have experienced multiple and frequent traumas involving a trusted caregiver or significant other, have consistently been associated with greater symptom severity across various mental health outcomes, including depression, anxiety, posttraumatic stress, and

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<sup>3</sup> Nourbakhsh, A., Joshi, K., & Yorston, B. (2021). An audit looking at the impact of poverty on referrals to child and adolescent mental health services. *BJPsych Open*, 7(S1), S338-S338. doi:10.1192/bjo.2021.886

<sup>4</sup> [Care experienced children and young people’s mental health | Iriss](#)

<sup>5</sup> [Audit Scotland, Children and Young People's Mental Health, 2018](#)

hallucinations<sup>6</sup> <sup>7</sup>. They require a change in approach, one that shifts the focus from what is wrong to what has happened<sup>8</sup>. For these children and young people, trauma-based counselling as well as clinical mental health interventions are required to address both their presenting distress behaviours and the underlying trauma. They require an integrated response in community settings or their own homes at times that work for them. Children and young people find it difficult to 'talk on command' meaning that set appointments often do not work for them. Above all children and young people valued relationship-based support which they felt was harder to achieve in a clinical setting.

*“My accommodation has their own counselling services in house that I have weekly sessions with, and I find this more beneficial than CAMHS as that was quite clinical and I felt I always had to go to them and there were days when I could not face going out and I decided that it was not for me.” (Young person)*

### **Crisis services**

Includem welcomes the intention for a systematic reform of services available to children and young people experiencing acute mental distress and the strengthening of the safeguards for emergency detention. We would welcome the involvement of a social work professional who can consider and potentially provide access to alternatives to admission as a more age and trauma appropriate support.

### **Age-appropriate services**

We support the development of age-appropriate in-patient care in line with the recommendations of the United Nations Committee on the Rights of the Child for the prohibition of children with mental health needs being treated in adult psychiatric wards and for adequate provision of age-appropriate mental health services and facilities. Where children and young people need to be admitted to a non-specialist setting because the alternative is not in their best interests, the CRC

<sup>6</sup> Martin, C., Van Ryzin, M. and Dishion, T. (2016) 'Profiles of childhood trauma: Betrayal, frequency, and psychological distress in late adolescence.' *Psychological Trauma: Theory, Research, Practice and Policy* Vol 8 (2): pp 206-213

<sup>7</sup> Planellas, I., Magallon-Neri, E., Kirchner, T., Forns, M. and Calderon, C. (2020) 'Do teenagers recover from traumatic situations? Identification of types of change and relationship with psychopathology and coping.' *Children and Youth Services Review*; Vol. 116.

<sup>8</sup> Portman-Thompson, K. (2020) *Implementing trauma-informed care in mental health services* (Online) Available from <https://journals-rcni-com.uhi.idm.oclc.org/mental-health-practice/cpd/implementing-traumainformed-care-in-mental-health-services-mhp.2020.e1443/pdf> Accessed 22/03/2022

recommends special safeguards are put in place to meet their needs appropriate to their age and stage of development<sup>9</sup>.

Children who have experienced neglect, abuse or exploitation are more likely to experience mental health difficulties, and they have a right to receive special support to help them recover their health, dignity, self-respect and social life (Article 39, UNCRC).

We also welcome a developmental approach for young adults, which includes access to CAMHS for as long as they need it. As previously stated, we recognise that children experience mental health and recovery differently for adults and it may not be appropriate for young adults to receive support from adult services even when they reach 18. Their care must take account of their brain development, particularly in relation to their experience of trauma.

### **Relatives, families, capacity and decision making**

Includem would encourage any measures in relation to the Act to be aligned with the articles of the UNCRC, in particular Articles 12, 3 and 5. We are concerned with the language around capacity of the young person and its connection in the consultation document with the role of relatives and families. Article 5 asserts the child's right to direction and guidance, in line with their evolving capacities. We would encourage any development of the legislation to start from the premise where the child is encouraged to contribute their views, based on full information and that the guidance and involvement of their parents is informed by an assessment of their capacity and capability, which takes account of more than their presentation.<sup>10</sup> Taking this approach will minimise some of the tricky issues posed by the Adult with Incapacity Act and those children who choose not to involve their parents. In keeping with the commitment of the Scottish Government to fully incorporate the UNCRC we support the view that children's rights should take precedence over any current provisions of the Act and should inform the development of new provisions and that any human rights enablement assessment be led by the UNCRC, not just take account of it.

**We would strongly urge that the development of any test on decision making capacity be developed with children and young people with expertise from experience of inpatient care or involuntary detention.** This should be developed

<sup>9</sup> [https://www.mwscot.org.uk/sites/default/files/2021-10/YP-Monitoring-2020-21\\_October2021.pdf](https://www.mwscot.org.uk/sites/default/files/2021-10/YP-Monitoring-2020-21_October2021.pdf)

<sup>10</sup> United Nations Committee on the Rights of the Child (2009) *General Comment 12 (2009): The right of the child to be heard*. Available from <https://www2.ohchr.org/english/bodies/crc/docs/advanceversions/crc-c-gc-12.pdf>

for and by children to ensure that it meets their unique needs and is not an adaption of something developed for adults.

While we support the intent to provide information to parents and families, we are concerned that there is not a similar assertion for the right to information for the child or young person, Article 17 of the UNCRC, which we consider as a precursor to fulfilling Article 12.

The young people we have supported during inpatient care agree with the experience of being shut out of decision-making or not be listened to. We would support the intention for children to choose their named person.

*“The right to choose who I need/want to be there, when I need them to be there.” (Young person)*

*“I should be able to say how I feel about the people who are involved and have them changed if I want them to be. It should be about what works best for me not what works best for services.” (Young person)*

*“It is hard enough as a teenager to talk to someone I don't know but impossible if I don't click with them. I want the right to ask for someone different and for this to be checked out with me often, just in case I don't feel able to ask.” (Young person)*

## Advocacy

Includem strongly support the intention to strengthen the duty to provide independent advocacy for children and young people receiving support for their mental health. This should include collective advocacy and **the establishment of a children and young person's oversight group to ensure their voice is at the centre in the planning and development of services to support them.** The work of the Youth Commission on Mental Health Services has already demonstrated the benefit of this approach.

Includem supports the call for the streamlining of advocacy services for children to include all systems children interface with including Children's Hearings, Additional Support for Learning and Secure Care. Children do not experience these systems in isolation, so it is imperative that they are supported in a way that provides consistency of relationship across all the challenges they are experiencing.

*“It was important to me to have someone not connected to the assessment to talk to about it - to be heard.” (Young Person)*

### **Accountability**

Includem agrees with the establishment of an oversight body which would include membership of the MWC, the Care Inspectorate, Education Scotland, Healthcare Improvement Scotland and the CYCPS, however **we urge the inclusion of children and young people** in a way that is meaningful for them and **the third sector**, who will be in a position to represent those children who are living with families and not receiving the help and support they need.

### **Autism, learning disability and neurodiversity**

Includem have a long history of supporting children and young people with a diagnosis or autism or another form of neurodiversity. These children and young people are most often referred as they are on the edges of care and at risk of becoming accommodated. These families have told us that they have been unable to access the mental health support that they require. They have either been redirected from CAMHS or the support they have been offered by CAMHS does not meet their needs. We are in support of any measures which would support the development of specific services and protections for this group of children and young people. Again, we would urge that this development is done in partnership with children, young people and their parents or carers to ensure that their expertise by experience informs its shape.

*“There are so many services offering a bit of this and that but nothing for kids on the spectrum with anger issues. You are trying to grapple with things and then you have far too many people involved. It is very exhausting... There were no mental health beds for someone their age, no drug residential services for those under 18. There are no service that deals with Asperger’s, drug addiction and mental health issues.” (Parent)*

### **Safeguards for treatment**

Includem strongly supports the position of the Children and Young People’s Commissioner Scotland to end the use of restraint for children in education settings. The children and young people we support have experienced restraint in a range of settings including residential, secure, education, mental health and justice. As children and young people who have experienced significant adversity and

trauma, they describe this experience or witnessing it use on others as further trauma. **Includem strongly urges that standards and safeguards are developed for all children, including those experiencing hospital detention, but not limited to this.** This is in line with Article 19 of the UNCRC which states that governments must go all they can to ensure that children are protected from all forms of violence, abuse, neglect and bad treatment by their parents or anyone else who looks after them and Article 25, the right to a regular review of their treatment, the way they are cared for and their wider circumstances.

### **Relationships between parents and children**

Includem again strongly supports the commitment to ensure parents and children are never separated by hospital detention because of inadequate resources in the community. In relation to children being separated from their families due to their own admission to hospital, we would again urge that this be framed under the UNCRC rather than other measures. In line with the intention to incorporate UNCRC into Scots Law, consideration needs to be given to how detention impacts on the child's right to parental guidance (Article 5), to not be separated from their parents (Article 9), government support for parents by creating support services for children and giving parents the help they need to raise their children (Article 18) and government support for disabled children and their families (Article 23).

Scotland's Independent Care Review recommended that where children are safe in their families and feel loved they must stay, and families must be given support together to nurture that love and overcome the difficulties which get in the way. Includem would urge that any action or approach recommended in relation to separating children and parents, regardless of who is being detained, is done in a way that #KeepsThePromise of the Independent Care Review.

### **Exploring integration of child law and mental health law**

Includem welcomes the opening of the conversation about how to develop a holistic and child-centred system of care and support for children. Includem are committed to #KeepingThePromise, in particularly ensuring that the policy and legislative context in which children live their lives is simplified and easy to understand and access. The experience of the children and young people we support is that they are often subject to numerous requirements under several pieces of legislation at the same time. This causes considerable confusion and for some young people consequences in the adult justice system as they have not understood what they have needed to comply with. We appreciate the commitment to reduce transitions for children, particularly into adult systems and acknowledge the current unknowns of implications of the National Care Service, however fundamentally we



believe that children have unique vulnerabilities and require special protection of their rights in order to be the best versions of themselves. Wherever possible we believe that children should be protected by laws that are developed with and for them.