

Working together to support clients during the coronavirus pandemic

People's right to advocacy still apply during the coronavirus pandemic and are legally enforceable.

The Coronavirus Act and the emergency powers in it may cause changes to the way that you support people. However, there is nothing in the Coronavirus Act, including in relation to national or local lockdowns, which suspends people's right to advocacy under the Mental Health Act 1983, Mental Capacity Act 2005, or the Care Act 2014. This means that a person's legal right to advocacy still applies in full. Our advocates are key workers and are professionals providing support. Advocates are not visitors. Our advocates are ready and able to provide advocacy in person.

The MCA and DoLS government guidance updated on 11 November makes this clear stating that "Face-to-face visits by professionals, for example to represent and support the person, are an important part of the DoLS legal framework. These visits can occur if needed, for example to meet the person's specific communication needs, in urgent cases or if there are concerns about the person's human rights." Further, "During and after the national restrictions in England, visits by professionals can occur if needed. [...] DoLS professionals should work closely with hospitals and care homes to decide if visiting in person is appropriate, and how to do this safely."

In addition, ADASS guidance 'Infection Control, Essential Visiting and Human Rights in Care Homes' published on 2 November asks us to consider that "whilst the initial use of restrictions to stop visits between care home residents, relatives and friends at the start of the pandemic in March, April & May 2020 can be justified; as time continues the need to develop more balanced and personalised approaches to visiting grow." Also, that "there is a duty to take reasonable, proportionate and practical steps to ensure people are included in decision making, and their rights protected [...] any changes to normal (pre-covid) visiting policies which restrict rights must take into consideration the needs of the person and other people, be flexible, with review and end points, and remain open to challenge." We also note the advice that "the Local Authority should seek to ensure that care providers are not being either unduly risk averse or risk tolerant and should assist them to resolve dilemmas. Risk assessments and visiting arrangements for residents need to be person-centred and risk assessments of environments will also need to be specific to each individual setting."

As a reminder, in general people are legally entitled to advocacy in the following situations:

- where a person would have substantial difficulty being involved in decisions, and cannot be supported by an appropriate person with regards to:
 - serious medical treatment (including for coronavirus-related symptoms)
 - advanced care planning (including DNACPR notices)
 - long term accommodation (including discharge from hospital into a different care setting)
- where a person requires support to engage in decisions about their care and support, including assessments, reviews and changes to their care package
- where a person is detained, or liable to be detained, under the Mental Health Act

- where someone may be deprived of their liberty, even if the assessment is taking place on paper or by phone.

We recognise the pressure you may be under at this time, but together we can protect people's rights. Government guidance is clear on how we can work safely. Our advocates complete a robust risk assessment prior to visiting and will work with you to ensure that we fully comply with your infection control processes, including ensuring that they adhere to social distancing guidelines.

Staff in mental health settings must also ensure that all people who are detained are able to access support from an IMHA, including facilitating access by phone or video call.

If you think advocacy could support any of your clients at this time, please contact our referrals team for helpful advice on helpline@voiceability.org or 0300 303 1660.