

This document was written on 3 April 2020 as internal guidance for VoiceAbility staff. We are now sharing it publicly in the hope that it might be of some assistance to others, especially advocacy organisations, and ultimately to people who rely on the support we all provide. It was written in good faith based on the best information available at a particular point in time. No liability is accepted for any adverse consequences of reliance upon it. We welcome feedback to CV19@voiceability.org

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Name and address of senior responsible person

Day Month 2020

Dear Recipient

Ref: Name of service

I write in reference to a letter – or other source of information – describe this that you have issued to recipients on Day Month and the potential impact and consequence that this may have on their legal and human rights. VoiceAbility fulfils a legal duty in providing advocacy for residents at this home – tailor as needed.

Whilst we recognised these unprecedented times and the pressures faced on all involved, we are concerned that the approach outlined in your letter would not be lawful. We request that this letter is withdrawn with immediate effect and the approach to clinical decisions be reclarified in line with lawful requirements and current guidance from the regulatory and professional bodies which has been developed in response to Covid19.

We draw your attention to the [joint statement on advance care planning](#) from the following organisations: British Medical Association (BMA) Royal College of General Practice (RCGP), Care Quality Commission (CQC) and Care Provider Alliance (CPA), dated 30 March, which states :

The importance of having a personalised care plan in place, especially for older people, people who are frail or have other serious conditions has never been more important than it is now during the Covid 19 Pandemic.

Where a person has capacity, as defined by the Mental Capacity Act, this advance care plan should always be discussed with them directly. Where a person lacks the capacity to engage with this process then it is reasonable to produce such a plan following best interest guidelines with the involvement of family members or other appropriate individuals.

Such advance care plans may result in the consideration and completion of a Do Not Attempt Resuscitation (DNAR) or ReSPECT form. It remains essential that these decisions

are made on an individual basis. The General Practitioner continues to have a central role in the consideration, completion and signing of DNAR forms for people in community settings.

It is unacceptable for advance care plans, with or without DNAR form completion to be applied to groups of people of any description. These decisions must continue to be made on an individual basis according to need.

We note that medical decisions must be made on an individual basis irrespective as to whether these decisions are made on public law (which may include 'rationing' decisions), or whether they are decisions taken under the Mental Capacity Act. This is reinforced by the [NICE Guidance](#) published 31 March 2020 and the [BMA ethical](#) guidance published 1 April 2020, both specifically in the context of Covid19.

We are advised that the actions proposed **in the letter/plan** may also constitute a breach of Article 2 of the Human Rights Act.

Finally, it may be helpful to remind you that you have a legal duty to make a referral for an Independent Mental Capacity Advocate (IMCA) when a person lacks mental capacity to make a serious medical treatment decision.¹ This will include many advanced care plan decisions. It applies to people who do not have friends or family who can be consulted about these matters. **To continue to enable you to discharge your statutory duties to refer, our IMCA service remain open. Please note, we have changed our ways of working in full compliance with government guidance. Please do contact name and contact details to make a referral, or to discuss this.**

Please provide me with your confirmation by **Day Month – allow 2 working days** 2020 that the **letter/plan** has been withdrawn in order that we can be assured that this matter can be addressed informally.

Thank you for your attention in this matter.

Yours sincerely,

Sender name

Sender job title

Sender email

Sender phone number

¹ The definition of serious medical treatment according to the Mental Capacity Act (MCA) Code of Practice is "giving new treatment, stopping treatment that has already started or withholding treatment that could be offered in circumstances where there is a fine balance between the likely benefits and the burdens to the patient and the risks involved; where a decision between a choice of treatments is finely balanced, or what is proposed is likely to have serious consequences for the patient." This clearly could include decisions about providing or with-holding healthcare in relation to for Covid-19, whether made in advance or at the time.