



mental welfare
commission for scotland

Coronavirus information for service users and their families (version 6, 23 March 2021)

Information for individuals

23 March 2021

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Our mission and purpose

Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

Our Purpose

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

Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

Main updates

2.4 Vaccinations in care homes

6.1 Visiting care homes

6.2 Visiting hospitals

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1. Introduction

The coronavirus pandemic is still causing disruption to all of our lives and restrictions are still necessary which may affect people's human rights.

Since December 2020 the majority of the country has been effectively in tier 4 with significant restrictions in our daily lives.

With vaccinations progressing, this is now likely to start to change gradually over the coming months, and some changes are in place already. One of the most distressing aspects has been the difficulty some families have faced seeing relatives in care homes, and the advice on this has now changed, with visits now possible.

This advice note provides an update for people who use services and their friends and families.

[The Commission has published separate advice for professionals.](#)

2. General principles

2.1. Human rights based approach

This is not a situation any of us have dealt with before and sometimes there will be no right or wrong answers. We need to guard against a “one size fits all” approach to issues and consider human rights for each individual, in difficult situations.

To protect us all, any changes are looked at in terms of whether they are:

- Reasonable
- Proportionate
- Justifiable

The current lockdown situation could be said to be restricting everyone’s rights to go about our daily lives unrestricted but it is considered **reasonable** as it is in place to protect us all from the spread of infection.

It is **proportionate** as it still allows essential travel and working while restricting non-essential social contact and it is **justifiable** as the virus spreads by social contact so restricting this is sensible to reduce this.

No group should be discriminated against in considering restrictions. For example, we know certain sections of society are currently “shielded”. This again fulfils the above criteria, as individuals with certain medical conditions and older people are more at risk of contracting the virus and of losing their lives as a result.

There is also a regular review of the temporary changes in place.

Human rights are important when looking at all aspects of mental health and capacity. There is more information available from the Scottish Human Rights Commission: www.scottishhumanrights.com

The Scottish Government has also put in place a Covid-19 Ethical Advice and Support Framework to help professionals deal with difficult ethical problems around the coronavirus.

<https://www.gov.scot/publications/coronavirus-covid-19-ethical-advice-and-support-framework/>

There has also been guidance from international sources. The United Nations Subcommittee on the Prevention of Torture has issued advice which states that anyone who is detained in these circumstances should have the same standard of care as that offered in the community. They should be encouraged to keep in touch with families, for example by telephone, online or by video link. Psychological support should be offered to them and to staff affected by the situation.

2.2. Human rights in care homes

We have been aware since figures were published at the end of April 2020 that more than half of all deaths in Scotland due to coronavirus were happening in care homes.

We were concerned that decisions were being taken about the treatment of individuals living in care homes without taking into account their individual circumstances.

This included people who cannot make decisions for themselves but who have the same human rights as everyone else.

It is important that each person's needs are looked at in a person centered way to work out the best way forward for each individual. Any guardian or welfare attorney should be involved in these decisions.

The Royal College of General Practitioners has produced guidelines for GPs to help them make decisions, and these also apply to their patients in care homes.

The Commission is a member of the Scottish Government's Care Home Rapid Response Team which is looking at the specific challenges care homes are currently facing. We are also contributing to an ethics group set up by the Chief Medical Officer to ensure the human rights of all those living in care homes are respected and upheld.

2.3. Testing in care homes and hospitals

Most people who lack capacity can be tested, provided they don't object, there is a section 47 certificate from their doctor that covers this and their attorney or guardian is consulted.

Difficulties can occur when a person in a care home does not have capacity and is refusing to have a coronavirus test. The current advice is that if the person has no symptoms, they should not be tested if they object, but should be treated as if they have the virus. Any decision to test someone using the Adults with Incapacity Act must be based on the principle of providing benefit to the person.

It is trickier in a hospital setting where a result may be needed to make a decision about discharging the patient. If the patient does not have symptoms, and objects to being tested, we do not think they should be tested. Some care homes have not wanted to admit anyone who does not have a negative result especially where they will not be able to be isolated for 14 days. This can negatively impact on the patient awaiting discharge from hospital. Each case needs to be looked at individually and advice sought from the Care Inspectorate and Mental Welfare Commission if there is doubt.

However, if someone in hospital has symptoms, they can legally be tested using the Adult with Incapacity Act, and we think this can be the right thing to do, even if they object. This is because the result will be needed to make decisions about the best treatment for them. For example, if they turn out not to have the virus they could be discharged to a more appropriate setting.

2.4. Vaccinations in care homes and hospitals

The vaccination programme in Scotland is progressing and many of the people at highest risk, for example those in care homes, have had at least their first vaccine.

When someone does not have the capacity to agree to a vaccine, this will be looked at on an individual basis and if it is felt an appropriate, a certificate from the GP (section 47), with consultation with any attorney or guardian, will allow this to happen. If an attorney or guardian with the relevant powers objects to vaccination but the doctor wants to give it, there are special procedures in the Mental Health Act to arrange an independent medical opinion to make a decision.

Vaccination for unpaid carers.

The Scottish Government has announced that unpaid carers are included in the priority vaccination programme in level 6.

2.5 Shielding

Individuals who were in the shielding group at the start of the pandemic are being asked to follow local guidelines where they live.

Suggestions on how they can continue to minimise their risk of infection can be found at:

<https://www.gov.scot/binaries/content/documents/govscot/publications/strategy-plan/2020/10/covid-19-scotlands-strategic-framework/documents/extra-protection-level-advice-people-highest-risk-coronavirus/extra-protection-level-advice-people-highest-risk-coronavirus/govscot%3Adocument/extra-protection-level-advice-people-highest-risk-coronavirus.pdf>

3. Mental Health Support Services

During the coronavirus pandemic it is vital to consider the effects on individuals experiencing mental health problems and their families. There is also likely to be an effect on everyone's mental health as the situation progresses.

Lack of staff and social distancing has meant much of the routine care and treatment in the community has been reduced or stopped. However, health services are developing service recovery plans and this is likely to change.

If you or someone you care for have been receiving services, and you are having trouble accessing urgent help or support, check any letter you may have received cancelling appointments or contact with a community psychiatric nurse (CPN) - there should be a number on that for emergency contact. The regular services should also have a number to call for urgent cases. If you have an advocate you can involve them for support.

If you or someone you care for needs help and you are not in contact with community mental health services, you should contact your GP if possible in the first instance.

3.1. NHS Mental Health Hub

- NHS 24 have an additional service now called the **Mental Health Hub**. To access this call NHS 24 on **111**. The recorded message will offer a number to press to access mental health support. The service is currently available 6pm to 2am but it is hoped this will expand.

Staff include psychological wellbeing practitioners and registered mental health nurses, who can refer you on to further help if needed.

3.2. Online information

- You can also access www.nhsinform.scot and visit their coronavirus (Covid19) page for more advice on your mental wellbeing during the pandemic.

Under "Your Mental Wellbeing" there is advice on looking after your mental health during the pandemic in general and more advice around depression, anxiety and stress. There are also specific advice sections on pregnancy, parenting and living with specific health conditions at this time.

3.3. Advocacy

- Advocacy is an important support for people and may be more so if emergency laws are put into place. People should continue to get this support by telephone, email or video link wherever possible.

If you don't have an advocate, you can find your local advocacy provider here: <https://www.siaa.org.uk/>

3.4. Helplines

- **Breathing Space** provide a confidential phone service for people over 16 who feel low anxious or depressed:

0800 83 85 87 (6pm – 2am weekdays and 24 hours at the weekend)

They have expanded capacity with additional funding and staff.

- **ChildLine** provides free confidential advice to under 19s, 24 hours a day and 7 days a week:

0800 1111 or www.childline.org.uk

- **Samaritans** provide a 24 hour helpline for those in emotional distress:

116 123 or e-mail jo@samaritans.org or visit www.samaritans.org

- Alzheimer Scotland's **24 hour Freephone Dementia Helpline** provides information, signposting and emotional support to people with the illness, their families, friends and professionals:

0808 808 3000 or helpline@alzscot.org

- **National Assistance Helpline** New national helpline for people who don't have a network of support, but are at increased risk if they contract coronavirus - for anyone who cannot get online, does not have family or existing community support and either:
 - is disabled
 - is receiving mental health support
 - has dementia
 - is over 70 years old
 - is pregnant
 - received the flu vaccine for health reasons¹.

Callers will be connected to their local authority who will support them to access the service they need, such as essential food and medication, links to local social work services for vulnerable children or adults, emotional support or contact with local volunteer groups.

0800 111 4000 – Monday to Friday 9am to 5pm

¹ Ready Scotland website <https://www.readyscotland.org/coronavirus/where-to-find-additional-support/> (21 April 2020)

3.5. Third sector organisations

Local and national third sector organisations and carer groups can also provide information and support:

www.carerstrust.org/scotland

www.supportinmindscotland.org.uk

www.samh.org.uk

The Scottish Government announced in May that they are providing additional funding to help certain vulnerable groups.

Lockdown is particularly difficult for people with autism and their families and extra funding is being provided to the National Autistic Society to help move their support from face to face to online and to Scottish Autism to expand their Autism helpline.

Autism helpline is available 7 days a week 8am to 8pm on 01259 222 0222

Young Scot have received funding to provide further online advice to young people on looking after their mental wellbeing.

Available on www.youngscot.net and on social media

Acknowledging the stresses lockdown is putting on families and relationships the government has provided more funding for **The Spark**, an organisation that provides relationship counselling, to expand their helpline.

Tel 0141 222 2166

Alzheimer Scotland has produced a "Coming into Hospital" guide for people with dementia which can be seen on www.alzscot.org

The Scottish Commission for Learning Disability (SCLD) has produced accessible, easy read guidance and self- help booklets to keeping themselves safe for people with a learning disability. These are available on www.sclld.org.uk

3.6. Other information

There has also been a relaxing of the rules around the availability of naloxone which reverses the effects of opiate/heroin overdose.

Funding has also been provided to help support prisoners who rely on opiates/drugs move to a new medication that can be administered weekly and also to provide more accommodation for prisoners on release to provide residential rehabilitation.

4. Treatment in the community

Issues about how and when depot injections are given and the monitoring of clozapine treatment have also been considered and advice issued to staff.

In some cases this will mean delaying monitoring or changing injections to oral medication. However if it is necessary, blood tests and injections can be performed by staff using the appropriate personal protective equipment.

The arrangements should allow individuals to continue any recommended treatment as seamlessly as possible while keeping everyone involved safe.

5. Emergency legislation

The Mental Health (Scotland) Act 2003, Adults with Incapacity (Scotland) Act 2000 and the Criminal Procedure (Scotland) Act 1995 are the laws we currently have to protect people who have a mental illness, dementia, learning disabilities, autism and other related conditions.

These laws provide a good ethical framework that can help anyone considering restricting someone's rights.

The UK and Scottish Coronavirus Acts provide temporary, emergency changes to these Acts. These would temporarily "relax" some of the legal requirements under these laws if this was needed because of pressure on staffing and hospital beds,. For example, possible changes include relaxing the rules around detaining patients under the Mental Health Act or around moving people from hospital to care homes.

As of today it has not been necessary to implement these changes as the NHS in Scotland has managed to maintain adequate staffing levels and levels of care.

One part of the emergency law which was used meant that guardianship orders and certificates of incapacity for medical treatments were extended and did not run out. This has now been lifted, so those that were extended will now expire 176 days after the date they were originally meant to.

6. Restrictions

6.1. Visiting people in care homes

The Scottish Government updated the advice on visiting relatives in care homes on February 24th 2021

You can find more information for residents and families here:

www.nhsinform.scot/openwithcare.

At present, two designated visitors weekly, visiting one at a time has been suggested as a starting point for welcoming visitors back into care homes.

The Scottish Government recognise how vital these visits are to residents and their families and it is felt that the current testing programmes and vaccine rollout we have makes it safe to allow this.

The advice is flexible however to account for local challenges like a covid outbreak.

This current advice is seen as a starting point for care homes and they are urged to think about respecting human rights, like the right to a private and family life, when deciding on further relaxations.

The care homes can decide when they think it is safe to increase the level of contact with discussion with public health if needed.

Time limits are to be decided by the care homes and visits will normally take place in the residents' rooms.

All of the recognised safety measures must be in place including hand washing and PPE.

Some contact has been agreed on and brief hugs or embraces will be allowed.

Continued rigorous cleaning will still be mandatory.

Outdoor visiting can include other family members including children in line with general guidance for Covid gathering outdoors.

Trips in the car are also possible with one designated visitor only.

The resident and the family, along with anyone who has Power of Attorney or guardianship, should decide, with the care home, who the designated visitors will be.

Essential visits will continue as before and are usually in circumstances where the resident is in distress or receiving end of life care.

Importantly, although travel is currently not permitted in and out of different areas an exception has been made for anyone visiting a care home, a hospital or a hospice.

Enhancing wellbeing visits and activities guidance

The Scottish Government is currently reviewing its October 2020 guidance on enhancing well-being activities and visits in care homes, which will be available soon.

6.2. Hospital visiting

The Scottish Government announced on 19th March 2021 that hospital visiting will be reintroduced on April 26th 2021.

This is not a return to normal visiting and only one person will be allowed to visit one patient under the new guidelines.

Until then the rule of essential visits only will stay in place which means visits for individuals with learning difficulties, autism, dementia, mental illness and similar conditions who would be in extreme distress if not visited or for people receiving end of life care.

Where a visit is not possible every effort should still be made to maintain contact using other means like phone or video call

Importantly, although travel is currently not permitted in and out of different areas an exception has been made for anyone visiting a care home, a hospital or a hospice.

6.3. Isolation

The Mental Welfare Commission is aware that some people, especially in care homes, may require to self-isolate but will not understand the need for this.

We have advised that every case must be considered carefully.

Anyone who needs to self-isolate, but doesn't understand why, should be placed under the least restriction possible to minimise any distress to them while keeping everyone safe.

As an example, the use of a stairgate to prevent someone walking about and coming into contact with others could be acceptable, while ensuring the individual had enough to occupy them in the room and that staff spend as much time interacting with them as possible.

6.4 Seclusion

Self-isolation is a concept that may be difficult for some individuals with a mental illness, learning disability, autism or dementia to understand. This can make it harder to keep people safe.

It is important that staff recognise that measures they may be taking to keep someone safe may in fact be seclusion. A person is secluded when they are kept apart from others and not allowed to leave the area, against their will. There are strict policy rules around this that should be followed by all staff.

The Commission has guidance for staff on seclusion which is relevant whether someone is in a hospital, a care home, other community setting or their own home. Seclusion should only be used as a last resort or to avoid physical restraint. Staff must ensure they minimise the need for seclusion and must keep records, which the Commission may ask to see.

For more information, see our good practice guide:

https://www.mwscot.org.uk/sites/default/files/2019-10/Seclusion_GoodPracticeGuide_20191010.pdf

6.5 Restraint

Unfortunately, as a last resort, staff sometimes have to use physical restraint to minimise harm to an individual or others. There are strict guidelines around this.

If a person has or may have coronavirus any form of restraint will increase the risk of passing it on. Many other factors must be taken into account in each situation to decide whether restraint is needed and how to restrain someone as safely as possible, including other illnesses.

Staff must also protect themselves as far as possible using personal protective equipment.

It is important that if this occurs that everyone involved is allowed to discuss the situation afterwards to debrief and all use of restraint procedures must be recorded every time.

For more information, see our good practice guide:

https://www.mwscot.org.uk/sites/default/files/2019-06/rights_risks_2013_edition_web_version.pdf

7. Mental Health Tribunals

Tribunals are still taking place by teleconference with support being provided for any individual taking part. A member of staff should help anyone in hospital and community based patients can be supported, if possible, by a mental health officer, advocate or solicitor.

Arrangements have been made for necessary paperwork to be sent by email and Mental Health Tribunal administration will provide instructions for teleconferencing.

8. Medical interventions and cardiopulmonary resuscitation (CPR)

Many people have been worried about resuscitation decisions for people with dementia or learning disabilities. There have also been concerns about access to ventilators in the event of a frail person becoming unwell with coronavirus.

People with poor physical health are less likely to recover if resuscitation is required, but having dementia or a learning disability is not a reason to refuse this or any other treatment to an individual. This includes having access to specific treatments like ventilation.

It is not ethically acceptable, even in these very difficult times, for there to be blanket policies that people with a particular condition, or living in a particular place, should not be resuscitated or not receive other specific medical interventions.

Doctors should discuss “Do Not Attempt CPR” (DNACPR) decisions with the individual in advance where possible and include their guardian, power of attorney and family where appropriate. The doctor may issue a DNACPR notice if their decision is that resuscitation should not be attempted if the person goes into cardiac arrest. Note that a DNACPR notice only relates to cardiopulmonary resuscitation (CPR). It is not about whether other forms of treatments or care are appropriate for the person or not.

Having an Anticipatory Care Plan (ACP) in place is very useful in these situations, as is a “What matters to me” document. See <https://www.nhsinform.scot/campaigns/anticipatory-care-planning> for more information.

In the absence of an ACP, discussions involving the individual if possible, family, welfare guardian or attorney and the medical team should decide what is best for that particular person. However, family cannot insist on a particular course of treatment if the medical team feel that it will not benefit an individual.

9. Witnessing documents

Some paperwork like advance statements or named person documents needs to be signed and witnessed.

With social distancing and restrictions on travel this can be difficult.

However it is important that no one is disadvantaged by this and that that people can still nominate a named person or make an advance statement.

The Coronavirus (Scotland) (No 2) Act has made this temporarily easier by removing the requirement for witnessing the signature of a person nominated to be a named person.

The patient's signature still has to be witnessed for both named person nominations and advance statements. This should not be a difficulty where an individual is an inpatient. However, there may be difficulties in the community in witnessing these documents in person due to Covid-19 issues. The Mental Welfare Commission is suggesting that, in the circumstances, it will be appropriate for those involved to have a conversation by email or contact via video link.

The documents could then be posted to the witness, keeping a copy. By law, the witness has to sign the original document which has been signed by the individual.

The witness should speak by phone with the individual again before signing so they are sure it is the individual's signature. They can then post the original signed document back.

The Commission's view is that if the delay caused by using post is a problem the copy document and e-mail from the witness should be treated as valid.

It is not ideal but is the best response to the current situation.

10. Data

The Coronavirus (Scotland) Act 2020 allowed public bodies more time to respond to freedom of information requests. This has now been reversed and the time limit is back to 20 days. However, the effect of the virus can be taken into account when considering appeals where authorities have exceeded timescales.

11. Mental Welfare Commission

The Mental Welfare Commission continues to work to protect the rights of those who need us.

Our freephone advice line is currently available 10am – 12 noon and 2pm – 4pm, Monday to Friday:

0800 389 6809

and our email enquiries@mwscot.org.uk can also be used for queries.



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