



**mental welfare**  
commission for scotland

## Information for individuals

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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

## Updated 6 May 2020

- 2.1 Human Rights in care homes added
- 2.2 Testing in care homes and hospitals added
3. Mental Health Support Services, May 2020 update added

### 1. Introduction

The current crisis with coronavirus is presenting us all with new challenges that are far reaching and constantly changing.

The risk to everyone's health means that some restrictions on an individual's human rights may be needed and it is important this is done in the best way possible.

The advice note below looks at some of these issues and will be updated as things change. It is important to check back to make sure you have the most up to date advice and information.

This note has been written particularly for people who use services and their friends and families. [The Commission has published separate advice for professionals.](#)

### 2. General principles

#### 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 (every 3 weeks at present).

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](http://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.

## **2.1 Human rights in care homes**

We are all aware of the worrying reports about the number of deaths occurring in care homes since the start of this epidemic. It is important to be clear about what should happen if someone in these circumstances develops coronavirus symptoms.

Every case should be viewed individually and where possible discussed with everyone concerned. It is not acceptable to have a blanket policy on a response in these situations.

If a resident is unable to give their own views their human rights must still be upheld as they would be for any other person.

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 now 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.

## **2.2 Testing in care homes and hospitals**

It is difficult if 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 symptoms, they should not be tested if they object, but should be treated as if they have the virus.

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.

However, if someone 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.

### 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.

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.

#### 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.

#### Online information

- You can also access [www.nhsinform.scot](http://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.

#### 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/>

#### 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](http://www.childline.org.uk)

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

116 123 or e-mail [jo@samaritans.org](mailto:jo@samaritans.org) or visit [www.samaritans.org](http://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](mailto: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 reasons<sup>1</sup>.

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

## Third sector organisations

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

[www.carerstrust.org/scotland](http://www.carerstrust.org/scotland)

[www.supportinmindscotland.org.uk](http://www.supportinmindscotland.org.uk)

[www.samh.org.uk](http://www.samh.org.uk)

## May 2020 update

The Scottish Government has announced this week 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

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

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

Available on [www.youngscot.net](http://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

#### **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

**Alzheimer Scotland** has produced a "Coming into Hospital" guide for people with dementia which can be seen on [www.alzscot.org](http://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](http://www.sclld.org.uk)

## **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. Most of these changes have not been put into place yet, and this will only happen if the Scottish Government decides they are necessary.

The plan is to temporarily "relax" some of the legal requirements under these laws if this is needed to help in the coming months.

Further information on this will be provided separately.

The possible changes include relaxing the rules around detaining patients under the Mental Health Act and around moving people from hospital to care homes.

One of the changes already in place allows guardianship orders to be extended for the time the emergency legislation is in force.

These changes are to help plan for significant reductions in staff and to free up hospital beds for admissions of people with coronavirus symptoms.

## 6. Restrictions

### Visiting relatives

The Government asked health boards to restrict hospital visits to essential contact only at the end of March. Visits to care homes are also limited to essential visits only.

While clearly this will cause considerable distress, this is to minimise the spread of the virus around hospital wards and care homes, affecting individuals and staff.

Essential visits may include those to people who have a mental illness, a learning disability or autism where not visiting would cause extra distress to the individual. You should however consider whether a visit is essential even in these circumstances. If you are considering a visit you should discuss with staff first and you may need to wear protective equipment such as a mask.

It is up to staff to decide if your visit request is seen as essential. They should explain the decision to you and record the reasons for agreeing a visit or not in the patient's notes.

Anyone who has any symptoms of coronavirus should, of course, not visit any patients in hospital, or anyone else.

In situations where individuals are in supported tenancies, each case should be looked at carefully. Residents should stay in their own homes wherever possible with their own support team.

### 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.

### 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.mwcscot.org.uk/sites/default/files/2019-10/Seclusion\\_GoodPracticeGuide\\_20191010.pdf](https://www.mwcscot.org.uk/sites/default/files/2019-10/Seclusion_GoodPracticeGuide_20191010.pdf)

## **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.mwcscot.org.uk/sites/default/files/2019-06/rights\\_risks\\_2013\\_edition\\_web\\_version.pdf](https://www.mwcscot.org.uk/sites/default/files/2019-06/rights_risks_2013_edition_web_version.pdf)

## **7. Mental Health Tribunals**

Tribunals will now take place by teleconference and support will be 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 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

There are some changes in the Coronavirus (Scotland) Act 2020 to Freedom of Information requests.

Mainly this involves giving public bodies longer to respond to the requests, and taking the effect of the virus 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](mailto:enquiries@mwscot.org.uk) can also be used for queries.