Our duties as advocates

This document was written on 17 March 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

Key messages

- We should continue to visit people when it is reasonable or practicable and appropriate to do so. Until now, this has been the case most of the time.
- The new social distancing requirements mean that we must also consider whether the visit is essential, creating a higher bar for when we would visit a client.
- Therefore all staff are required to follow the steps in the visits checklist.

How do we ensure that clients can still get advocacy support?

Colleagues have reported services being closed to visitors, and expressed concern about how we will continue to provide advocacy services in these circumstances, especially where:

- clients require support in relation to fundamental human rights issues, such as detention or deprivation of liberty
- clients have a statutory right to advocacy

What does the law say about our duty to meet with people?

To respond to this, we need to consider our legal duties:

- The Mental Capacity Act and Care Act require that advocates meet with a client whenever this is ‘appropriate and practicable.’
• Similarly, the Mental Health Act requires that advocates comply with a ‘reasonable request’ to visit and interview a client.
• There are no similar duties to provide services to individuals under the Regulations which apply to Health Complaints.

What does the law say about other professionals’ duties to enable us to meet with people?

Under the Mental Health Code of Practice, ‘Clinicians and hospital managers should ensure that IMHAs are able to access wards and units on which patients are resident and meet with the patients they are helping in private, unless the patient objects or it is otherwise inappropriate.’ This requirement is caveated on clinical and security grounds.

The Care Act (Regulations) require that the Local Authority ‘take(s) reasonable steps to assist the independent advocate to represent and support the individual.’

The legal duties to provide advocacy under the Mental Capacity Act require that all reasonable steps must be taken to ensure people can access such advocacy.

Case law has established that people who are deprived of their liberty are both entitled to and must be enabled to have the lawfulness of their detention reviewed speedily by a court. It follows that any interference in this would need to be reasonable.

Recent Health Protection (coronavirus) regulations passed specifically in relation to coronavirus could be used to restrict this, but it is too early to tell.

What does that mean in practice?

We should continue to visit people when it is reasonable or practicable and appropriate to do so. Until now, this has been the case most of the time.

The new social distancing requirements mean that we must also consider whether the visit is essential, creating a higher bar for when we would visit a client.

Therefore all staff are required to follow the steps in the ‘General Guidelines’ document (now available at voiceability.org/coronavirus).

What about DoLS?

We are in contact with the Department of Health and Social Care to provide our support in helping to ensure that people are safe and that everything practicable is done to protect people’s rights and hear their voices even in this unprecedented situation.
What about alternatives to visits?

Many colleagues are thinking about how we can continue to provide advocacy where we can’t meet clients in person through phone, video call or email. We should do this whenever it provides a viable and effective (or only) method of working with people. More guidance is provided in the ‘Providing Advocacy from a Distance’ document (now available at voiceability.org/coronavirus).

Managers should work with settings where this may be appropriate to ensure that potential clients have access to appropriate facilities and privacy in which to meet with their advocate.

The Mental Health Act Code of Practice requires that ‘patients should have access to a telephone on which they can contact the IMHA service and talk to them in private’ and that IMHA must be able to ‘meet with the patients they are helping in private, unless the patient objects or it is otherwise inappropriate.’ This may help in negotiating arrangements for access to private rooms and facilities for clients to contact advocates who are subject to the Act.