Southern Advocacy Services
it changed my life

The Riverside Centre. The Quay.
Newport. Isle of Wight. PO30 2QR
01983 559299
08443 588877

- Southern Advocacy Services –

Coronavirus (COVID-19) Pandemic Advocacy Guidance

KEY:
P – the person / client / patient / service user / resident
Decision maker – as defined with the MCA
Managing Authorities [DoLS] – Care and Nursing residences and Hospital's
CoP – Court of Protection
MCA – Mental Capacity Act
DOHSC – Department of Health and Social Care
PHE – Public Health England
PHO – Public Health Officer (power to impose restrictions for screening, isolation and health reasons)

Purpose:

This guidance is intended to set out Southern Advocacy Services' position and approach during the Coronavirus Pandemic. It considers the impact on the Mental Capacity Act and Deprivation of Liberty Safeguards for advocates. It is not legal guidance.

This guidance will be regularly reviewed and is subject to change as national policies and legal updates develop. This guidance is only relevant whilst the Government's policies regarding it remain in force – staff will be notified when these are rescinded.

All Southern Advocacy staff must become familiar with this guidance and consider to the recommendations during the Pandemic. This guidance is also intended to inform partner organisations, commissioners and people who access our service.

If advocates feel that a person's views or rights are not being respected - with regard to this guidance, or anything relevant - they should approach the decision maker or authority with their justifications to appropriately represent P.

Please also find included Annex A from the DOHSC – guidance for decision makers in hospital and care homes.

Restrictions which may be applied during the Pandemic:

During the Pandemic, it may be necessary to change peoples usual care and treatment to protect them, or others, from contracting COVID-19. The following is a list of possible changes which may affect P: *[this is not an exhaustive list]*

- Testing for COVID-19
- Treatment for suspected or confirmed COVID-19
- Isolating P if suspected of contracting COVID-19
- Restricting contact from family or friends to prevent the transmission of COVID-19
- Restricting the movement of P to prevent viral transmission
- Moving P to better utilise resources, placements and beds during the Pandemic
- Other restrictions placed on P to prevent the transmission of COVID-19

Southern Advocacy Services
it changed my life

The Riverside Centre. The Quay.
Newport. Isle of Wight. PO30 2QR
01983 559299
08443 588877

Mental Capacity Act - Guidance:

Advocates who support P when they lack the mental capacity to make specific decisions [IMCA: change of accommodation, safeguarding, and, serious medical treatment] must remembers that the **principles** of the MCA remain in force: including the 5 principles (presume capacity, support P to be involved, P's right to make unwise choices, decisions must be in P's best interests, and, decisions must be the less restrictive available). The other MCA **principles**, such as considering P's previous wishes and views, and, decision specific mental capacity and best interest decisions are also still required.

When considering changes to P during the Pandemic, the decision maker must still seek consent from P and obtain P's views in relation to the proposed changes, and, they must take this information into consideration when completing all best interest decisions.

Decisions required for P must consider any 'advance decision to refuse treatment' (ADRT) made by P, or, 'do not attempt resuscitation' (DNACPR) decision in place. DNACPR's **should not** be imposed generally, each decision must be specific to P and follow the relevant legal process.

All aspects of the 'best interest' requirements (set out within the MCA) remain in force.

Deprivation of Liberty Safeguard - Guidance:

Advocates who support P within DoLS assessments and authorisations [IMCA 39A, 39C, 39D & Paid RPR's] must remember that P's rights (under DoLS) have not changed unless an additional level of restriction is placed on them. DoLS remain necessary for people who meet the 'acid test' *'[not free to leave, and under continuous supervision and control']* and lack the mental capacity to consent.

In most cases, changes to P's care or treatment in relation to the Pandemic will not give rise to require a new DoLS authorisation. Care and treatment must continue to be provided in every person's best interests.

The following points need to be considered by advocates during this Pandemic:

1) DoLS will not apply to [the majority of] people who require life sustaining treatment and lack mental capacity, during the Pandemic – so long as the treatment is the same as would normally be given to a person with mental capacity.

2) <u>Current DoLS authorisations, DoLS reviews, and, DoLS applications:</u>

a) A current DoLS authorisation may provide a legal basis for additional measures which are required during the Pandemic, e.g. testing and treatment.

b) If a DoLS authorisation is in place, but the intended restriction surpasses its authority, the Managing Authority [or Paid RPR] should request a DoLS 'review'.

The Riverside Centre. The Quay.
Newport. Isle of Wight. PO30 2QR
01983 559299
08443 588877

c) If a new DoLS is required, the Managing Authority should carefully consider the use of an **urgent DoLS authorisation** with a standard application, as it is immediately implemented and lasts for 7 days - which is extendable a further 7 days. There is an abridged ADASS FORM (standard DoLS forms) to save Managing Authorities time in implementing urgent DoLS authorisations during this Pandemic.

3) If the reason for isolating P is **purely to prevent harm to others**, or to **maintain public health**, then the PHO powers should be used. Also, if P's capacity fluctuates the PHO powers may be more appropriate than a DoLS or the MCA https://www.gov.uk/guidance/contacts-phe-health-protection-teams.

4) DoLS authorisations will remain applicable to people who move within the same setting – e.g. between hospital wards.

Face-to-face Visits with P:

Advocates should avoid visiting P unless **absolutely necessary**.

The DHOSC does not specify refer to advocates in its guidance, however, it does refer to 'assessors' for DoLS. For the purposes of this document, this guidance is a proportionate and considered interpretation of the DHOSCH guidelines, combined with other relevant Government and Court recommendations.

As advocates our job is to independently ensure that P's views, wants, wishes and rights are appropriately considered and respected within decision making processes. Usually we do this by spending quality time directly with P and by consulting those who know them well to inform/ evidence their wishes. During the Pandemic advocates must work differently to balance the rights of P with the current risk of viral transmission.

We expect advocates to make every reasonable effort to correspond with P using electronic or remote means to obtain their views, if this is not possible, advocates must consider if a visit to P would benefit their 'information gathering or evaluation'.

> e.g. if P has no verbal communication and no means of demonstrating their views (facial expressions, body language, observations, etc.) then a face-to-face visit **would not** be appropriate due to the 'high' risk of viral transmission.

If, P is unable to communicate via electronic means, but would be able to express their views if the advocate is present (which is unlikely), they must consider the importance and weight of this information in their 'information gathering or evaluation'.

> e.g. if P could only display comfort in being in a placement to a visiting advocate, and, all relevant other persons have been consulted whose views reflect P being settled, a face-to-face visit **would not** be appropriate due to the 'high' risk of viral transmission balanced with obtaining P's view which has been unquestionably represented by others.

Southern Advocacy Services
it changed my life

The Riverside Centre. The Quay.
Newport. Isle of Wight. PO30 2QR
01983 559299
08443 588877

If, P is unable to communicate via electronic means, and their ability to express their views if the advocate is present carries sufficient weight, a face-to-face visit is required **– please complete the Risk Assessment [which will be sent alongside this document] if a visit is required**.

There is a certain level of responsibility expected from Managing Authorities (influenced by the CoP Judgement [BP v Surrey County Council]) to make reasonable adjustments to facilitate contact with P when in their care/residence – this is in relation to family members visiting, but, relates in principal to contact with advocates. This includes considering the provision of laptops to allow video contact with residents, and cordless phones so residents can speak in private, etc.

If an essential visit is required, it may be possible that a suitable space can be arranged for a visit – adhering to the PHE 'social distancing' guidance. This may include a room separated by windows so the advocate can speak to P, or a large room with sufficiently separated seating. Each residence/placement is different, and advocates should use discretion in their approach when discussing options for contact and essential visits.

It is the advocates responsibility to take their own PPE [provided by Southern Advocacy] when visiting any multiple-occupancy building.

Government guidance citations:

- CoP Judgment: BP v Surrey County Council; Anor [2020] EWCOP 17 - 25 March 2020
- PHE: Guidance on social distancing for everyone in the UK – updated 30/03/2020
- DHOSC: The MCA & DoLS During the Coronavirus Pandemic – published 09/04/2020

Annex A: Decision-making flow chart for decision makers in hospitals and care homes: