

Coronavirus: family contact in inpatient units

Introduction

This factsheet is for family carers whose relative is detained under the Mental Health Act in an inpatient unit.

If your relative is placed in a care home or supported living service see “*Coronavirus – restrictions placed on family contact*” by The Challenging Behaviour Foundation available [here](#) or contact Mencap’s Learning Disability Helpline for Advice.

Key points:

- NHS England guidance issued on 8th April 2020 encouraged people to stay in touch with their family member via phone and video calls.
- New guidance issued on 5th June 2020 recommends that only **one** family member should be permitted to visit. However, the guidance advises that in some circumstances two visitors may be permitted.
- Anyone showing symptoms of coronavirus should not visit.
- NHS guidance recommends that visitors **must** wear masks or face coverings at all times.
- Under the Equality Act 2010 reasonable adjustments must be made to ensure a person is not disadvantaged because of their disability.
- The response of the inpatient unit must be reasonable and proportionate. Your right to a family life can be restricted in an inpatient setting however the action must be ‘proportionate’ and no more than necessary to address the problem concerned i.e. the spread of coronavirus.
- If you are concerned that the contact arrangements imposed as a result of coronavirus are detrimental to your relative’s wellbeing contact Mencap’s Learning Disability Helpline for advice.

Visiting guidance

Guidance from NHS England and NHS Improvement on visiting inpatient units updated on 5th June 2020 lifts the previous recommendation to only allow visitors in “exceptional circumstances”. Visiting arrangements will now be decided at a local level by NHS Trusts and providers.

In general, the national guidance advises:

- Trusts should limit visiting to one close family member. However, a second additional visitor could be permitted in some circumstances.
- Visitors should be given practical advice about social distancing, wearing personal protective equipment and handwashing.
- Visitors **must** wear a mask or face covering at all times.

You can read the guidance in full on the NHS England website [here](#).

Blanket restrictions on visiting

We have been made aware of blanket bans being introduced by NHS and private sector inpatient units preventing family carers from visiting their relative in response to the coronavirus pandemic. Policies that impose blanket visiting bans or blanket restrictions on family contact are likely to be unlawful. Please contact Access Social Care with information about such policies.

Inpatient units have a legal duty to consider the risks and benefits of visiting on an individual basis and explore all options to maintain meaningful contact.

Legal rights

A. Human Rights

Article 8 of the European Convention on Human Rights protects your right to respect for your private life, family life, home and your correspondence e.g. letters, telephone calls and emails. In general, you have the right to enjoy family relationships without interference from government. This includes the right to regular contact.

Your rights and those of your relative can be restricted or ‘interfered with’ if the provider can show that it aims to protect public safety, health or the rights and freedoms of other people.

However, the interference must be ‘proportionate’ and no more than necessary to address the problem concerned i.e. the spread of coronavirus.

What does being “proportionate” mean?

As set out above your relative’s right to a family life can be restricted in an inpatient setting if it necessary and proportionate in order to protect public safety, health or the rights and freedoms of other people. There is a clear public safety issue at present of preventing the spread of coronavirus. However, the action must be ‘proportionate’ and no more than necessary to address the problem concerned.

An inpatient unit should consider a number of factors including:

- The wishes of the person to maintain contact with their family
- The actual risk to the person, staff and other patients of visits from one family member or more than one family member
- The impact on the person’s wellbeing (including mental health and distress) of restrictions on family contact
- The increased use of restrictive practices such as seclusion, restraint and PRN medication as a result of the deterioration in a person’s wellbeing
- Previous safeguarding concerns (allegations against family carers or paid staff at the inpatient unit)
- External monitoring of the inpatient service e.g. via a social worker, advocate etc.

Visiting arrangements should be regularly reviewed to check that they remain a proportionate response to the risk of spreading coronavirus.

B. Discrimination

Under the Equality Act 2010 all public bodies are under a duty not to discriminate on the basis of disability. One form of discrimination is ‘indirect discrimination’ which occurs when a provision (such as a policy), criteria or practice that applies to everyone but disadvantages disabled people. It makes no difference whether the public body intended to disadvantage disabled people.

Another form of discrimination is a failure to make ‘reasonable adjustments’ for a disabled person, to ensure that she or he is not disadvantaged because of their disability.

The Equality Act is still fully in force and has not been impacted by recent changes to the law introduced as a result of covid-19.

What reasonable adjustments could be made?

Some people with autism and learning disability may experience significant levels of distress as a result of a change in their routine such as no longer having a weekly visit from both parents. This can result in a clear detriment to their wellbeing e.g. an increase in self-injurious behaviour. In circumstances such as this the two visitors may be permitted to visit as a reasonable adjustment.

Whilst the NHS England guidance states that “*Visitors **must** wear masks or face coverings at all times.*” inpatient units have a legal duty to make reasonable adjustments. Some

individuals with autism and learning disabilities may experience distress by a change such as seeing a parent wearing a face mask. Whilst solutions to enable the individual to accept such a change can be explored such as a photo of the parent wearing a mask being sent to the person in advance, supporting the person to put a mask on a large photo of the family member etc. these will not always be successful and reasonable adjustments should be made in such circumstances which may mean that a visitor is permitted not to wear a mask for some or all of the visit. For example, the visit could take place in an outside space without a mask being used.

If face to face visiting cannot take place e.g. a family member is at high risk or shielding creative solutions to maintain meaningful contact should be explored and reasonable adjustments under the Equality Act 2010 must be made.

Examples of creative solutions that could be considered are:

- Regular video calls on a tablet or phone. This may need to be attempted more than once and efforts should be made to support the person to learn how to use the device. The detaining authority may need to buy the tablet or phone for the patient/resident to use. Tablets and phones can be cleaned on arrival at the inpatient unit and before each use.
- Contact through a window so as to reduce the risk of infection
- Contact in the hospital carpark, whereby the person is in one vehicle and their visitor in another enabling a visit to happen at a distance
- Allowing the person to receive parcels, photographs and gifts (upon receipt, such items may have to be disinfected)

C. Decision making & best interests

The Mental Capacity Act 2005 is still fully in force. This means people aged 16 years and over should be presumed to have capacity. If in doubt capacity should be assessed, and if it is found that a person lacks the capacity to decide on visiting and contact arrangements a best interest decision should be made in the usual way. A best interests meeting may take place via a telephone or video call. You can prepare for a best interest's discussion by considering the risks and benefits of different contact options.

For more information see the Mencap website [here](#).

Legal challenges

Wherever possible attempts should be made to resolve any concerns about contact arrangements directly with the inpatient unit. However, if an agreement cannot be reached it may be possible to challenge the lawfulness of the decision.

Recent legal challenge

A was detained under section 3 of the Mental Health Act in a hospital run by Hertfordshire Partnership University NHS Foundation Trust. A is a young man with autism, learning disabilities and anxiety. His parents have visited their son twice a week in hospital since he was admitted over 2 years ago. His parents' visits were stopped on 15 March 2020 when the Trust banned the parents from visiting their son due to the Coronavirus pandemic.

Since then, the young man has been able to telephone his parents roughly twice a week. He had not previously communicated with his parents via telephone. The parents noticed that their son found it difficult to communicate with them on the phone. They sensed that their son was becoming distressed by not having any face-to-face contact and that his behaviour was becoming more agitated and challenging. They were worried that these changes would jeopardise him being discharged into the community. Via the telephone they could not see his face to gauge how he was feeling and provide emotional support and reassurance to him.

The Trust refused to arrange other means of communication. On behalf of the young man, his parents instructed a legal challenge to the Trust's policy. On 8 April 2020 the Trust confirmed it would:

1. provide the young man with an iPad set up for Skype and Zoom so he can communicate via video with his parents; and
2. amend its policy on visits to reflect the Trust's duty to facilitate the use of online communication between patients and their relatives.

For more information see the Doughty Street Chambers website [here](#)

Steps to take

Before visiting contact your relative's responsible clinician (usually their Psychiatrist) to discuss appropriate visiting arrangements. If you are concerned about the visiting arrangements you can take the following steps:

1. Speak to the hospital manager about your concerns and any suggestions you have to see if a solution can be reached. If you are unable to reach an agreement, ask them to put their decision in writing and set out why they have made this decision.
2. If you are not satisfied with contact arrangements contact Mencap's Learning Disability Helpline for advice.

If you have other concerns about your relatives care such as their treatment in the inpatient unit or delays in moving your relative out of inpatient care into a community placement contact Mencap's Learning Disability Helpline for advice.

The Learning Disability Helpline is open from 9am-3pm, Monday to Friday.

You can get in touch by:

- phoning **0808 808 1111**
- emailing helpline@mencap.org.uk
- Webform https://www.mencap.org.uk/contact/contact_mencap_direct

This factsheet incorporates information from "*Learning disability, coronavirus and international human rights law*". With thanks to Oliver Lewis, Doughty Street Chambers for providing permission to include this information and for reviewing the factsheet. The original information can be downloaded from: <https://www.doughtystreet.co.uk/>