National Webinar: Applying the Mental Health Act during the COVID-19 Pandemic | video MHA assessments

Wednesday 27 May 2020

11:30 - 12:30

NHS England and NHS Improvement

Welcome & Introductions

Mark Trewin, Mental Health Social Work Lead, DHSC

Agenda

11:30 - 11:35	Welcome and Introductions	**Mark Trewin**: Mental Health Social Work Lead, DHSC
11:35 - 11:45	Application of video assessments to the Mental Health Act: Key messages from the Guidance	**Ruth Davies**: Programme Manager Adult Acute Care Mental Health, NHSE/I **Becky Gate**: Senior Project Manager, Digital Mental Health, NHSE/I
11:45 - 12:00	Lessons learnt: South London and Maudsley NHS Trust (SLaM) + Partner Local Authorities	**Carla Fourie**: Director of Social Care, SlaM
12:00 - 12:25	Q&As	**Mark Trewin** & panel guests
12.25 - 12.30	AOB and Close	**Mark Trewin:** Mental Health Social Work Lead, DHSC

The team today

Chair

MARK TREWIN
DHSC

Speakers and Panel Guests

ANDY BRAMMER
AMHP, WAKEFIELD

BECKY GATE
NHSE/I

CARLA FOURIE
SLaM

HANNAH COAKER
DHSC

MARK TREWIN
DHSC

MATTHEW LEES
DHSC

RUTH DAVIES
NHSE/I

Technical support/chat box facilitator

NATALIE
SCARIMBOLO
SKILLS FOR
CARE

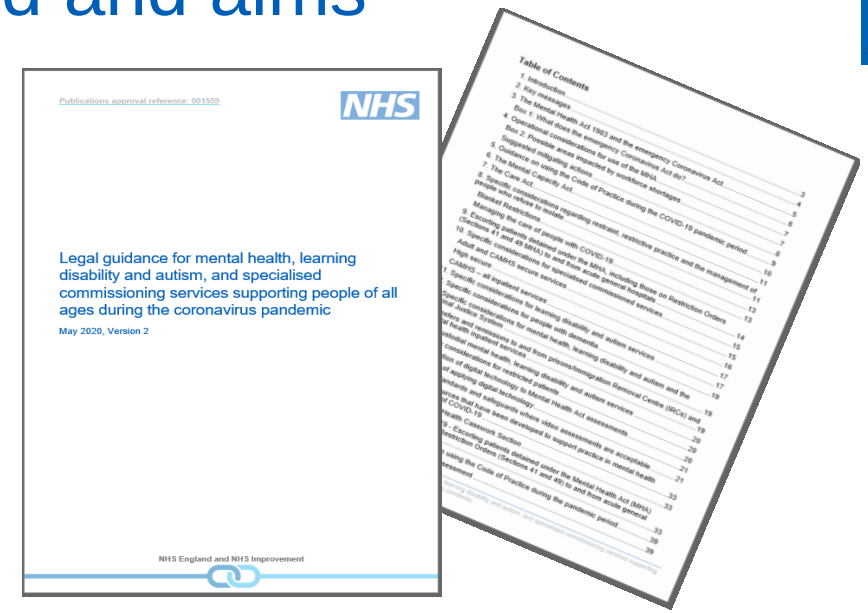
JOSIE WELLER
NHSE/I

Key messages from the guidance

Ruth Davies, Programme Manager, Adult Acute Care Mental Health, NHSE/I
Becky Gate, Senior Project Manager, Digital Mental Health, NHSE/I

V.2 of the Legal guidance – background and aims

- Legal guidance has been developed to support continued safe use of the MHA in the face of challenges posed by COVID 19, so that people can access the care they need whilst having their rights upheld
- The challenges resulting from the pandemic include:
  - Resource shortages across health and social care
  - Social distancing, PPE and other measures intended to reduce infection
  - Legal complexity regarding use of the Act for ensuring compliance with infection control measures
- These pose legal and operational challenges to assess, detain and treat people in a safe and timely way, whilst maintaining the safeguards set out in the Act and code of practice
- The guidance aims to mitigate these challenges by providing advice for Mental Health, Learning Disability and Autism, and specialised commissioning services on applying the MHA during the COVID-19 Pandemic
- It was developed with a range of stakeholders from across the sector, including experts-by-experience, providers and colleagues from DHSC and CQC



- **Version 2 of the guidance was published on 19th May. Key new additions include:**
  1. Guidance on how the Code of Practice can be used during the pandemic
  2. Application of digital technology to MHA assessments
- A webinar covering key messages was held on 7th May and can be accessed via the Future Collaborations platform.
- Today we will be focusing on the guidance around digitally enabled MHA assessments, which we know is particularly time critical.

Digital technology can play an enabling role in the MHA

Long Term Plan recognises digital technology as a key component of service transformation

Viewed as an essential component (and recommendation) of a modern MHA by the Independent Review. Opportunities accelerated by current challenge of the COVID-19 pandemic

Digital Mental Health Act Steering Group set-up:

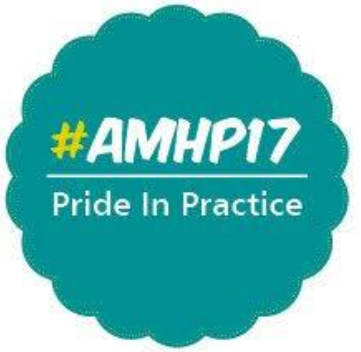
- 14th April first meeting
- The application of video for MHA assessments prioritised as the first key area of policy development - noting complexity and legal ambiguity
- Through two follow-up sessions established policy position and draft guidance.

Annex C – Areas being explored for digitisation in support of MH Act processes-

Category	Aspect for digitalisation	Legal barrier	Covid critical	Available digital solutions	Focus for discussion
Workforce & resource mgmt.	Locating S12 doctors	N	Y	Y	?[1]
Workforce & resource mgmt.	Staff passports	N	N	?	✗
Workforce & resource mgmt.	Locating S136 suites	N	?	?	?[1]
Key interactions	Access to independent mental health advocacy	N	Y	Video consultations*	✓
Key interactions	Access to SOADs	N	Y	Video consultations*	✓
Key interactions	Access to mental health tribunals	N	Y	Video consultations*	✓
Key interactions	Access to hospital manager hearings	?	Y	Video consultations*	✓
Key interactions	S120 – CQC monitoring	N	Y	Video consultations*	
Key interactions	Mental Health Act assessments[2]	Y	?	Video consultations*	✓
Data & information	Legal documentation[2]	Y	Y	?	✓
Data & information	Mental Health Act Information	N	Y	Y	✓
Data & information	Personal Health Records	N	N	?	✗
Decision support tools	eObservations	N	N	Y	✗
Decision support tools	Crisis prediction tools	N	N	?	✗
Decision support tools	Supporting timely discharge	?	?	?	✗

*Includes other remote channels including telephone calls
[1]Significant local variation where it is not a problem in some areas and a huge concern in others
[2]Across Part II and III

A group effort…



… with over 70 members

MHA assessments have become especially challenging during Covid-19 pandemic period

- Given the implications of MHA assessments, it is of paramount importance that the interaction is of high quality
- Social distancing and the requirements for PPE can introduce a number of barriers to undertaking MHA assessments in person and building rapport
- In order to prevent infection and to ensure the safety of the person and staff, in some circumstances the pandemic may necessitate the use of digital technology

> "Body language, especially facial language is what both sides rely on. Have you seen full PPE? Imagine being unwell and asked questions by that. Full PPE upsets general hospital patients and is impossible for a MHA assessment."
>
> *Expert by experience*

IT IS THE OPINION OF NHSE/I AND DHSC THAT DEVELOPMENTS IN DIGITAL TECHNOLOGY ARE NOW SUCH THAT STAFF MAY BE SATISFIED, ON THE BASIS OF VIDEO ASSESSMENTS, THAT THEY HAVE PERSONALLY SEEN OR EXAMINED IN A 'SUITABLE MANNER'

In specific situations during Covid-19, high-quality MHA assessments via video can be considered

Assessments in person

- Even during COVID-19 period, it is always preferable to carry out a Mental Health Act assessment in person
- Under specific circumstances where this cannot happen, it is possible to conduct a video assessment
- Decisions should be made on a case-by-case basis and processes must ensure that a high-quality assessment occurs, regardless of channel– this is covered in more detail in the Legal guidance (v2, currently under publication review)

Video assessments

Video assessments can be considered if:

- there is significant risk of harm via transmission of coronavirus to the person and/or staff
- **AND** there is significant risk of harm due to the delay of assessment and/or subsequent intervention
- **AND** the minimum quality standards and safeguards are met to ensure that a meaningful and high-quality assessment can occur in a safe environment

Minimum standards and safeguards have to be in place for video assessments

Processes should be in place to ensure focus on service user needs, support for staff, and accountability for the system:

- ✓ Wherever possible make a joint decision and an agreement on the use of video assessments, taking into account the person's views
- ✓ Staff should be confident of their competence, training (and support) to facilitate a video assessment that meets the MHA requirements. This includes awareness of any biases
- ✓ Staff should ensure:
  - the person is <u>not</u> adversely impacted by the use of video assessments
  - there is adequate visual and audio access
  - the person's communication needs are met
  - the assessment <u>must not</u> be recorded.
- ✓ A pre-determined contingency plan should be agreed before the video assessment commences
- ✓ Local and national processes to monitor the quality of the MHA and to inform continuous improvement:
  - clear, auditable and timely documentation across relevant organisations
  - reflection of process for both staff and service users

DECISIONS SHOULD BE GUIDED BY THE ASSESSMENT TEAM WITH THE FUNDAMENTAL QUESTION BEING IF THE METHOD PROPOSED CAN ENSURE THAT A HIGH QUALITY ASSESSMENT CAN OCCUR IN A SUITABLE MANNER

Technological and environmental standards have also been described in the guidance

In order for a video assessment to be considered, there must be robust digital technology in place and a suitable environment that can enable a high-quality personal assessment to be conducted.

To ensure this, the following minimum standards should be met:

1) body language and facial expressions of the person being assessed, and staff should be accurately observed

2) a consistent connection must be maintained that allows uninterrupted video and audio streams. To ensure this, technology and equipment should be tested in advance of the assessment starting, for example by checking the broadband speed or by streaming a short video

3) a calm, professionally appropriate environment should be maintained which is free from distractions, interruptions, or unnecessary people

4) technology must be secure and patient confidentiality should be maintained throughout. It is recommended that the assessment must not be recorded.

The choice of the specific video conferencing platform is left to the discretion of individual trusts and services

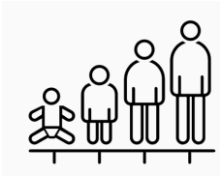
Additional considerations have been outlined in the guidance

…by setting

Community: Difficult for minimum standards to be met. Where they can, the AMHP and at least one S12 doctor should attend the assessment in person, and in exceptional circumstances, the second doctor may join by video.

Place of Safety or Mental Health hospital: It is the requirement that at least one mental health trained professional must attend the assessment in person

Part III: NHSE/I and HMPPS encourage greater use of digital technology in prison settings - see new Guidance on Prison Transfers and Remissions.



… by population

Reasonable safeguards should be applied to CYP, LD&A and older adults:

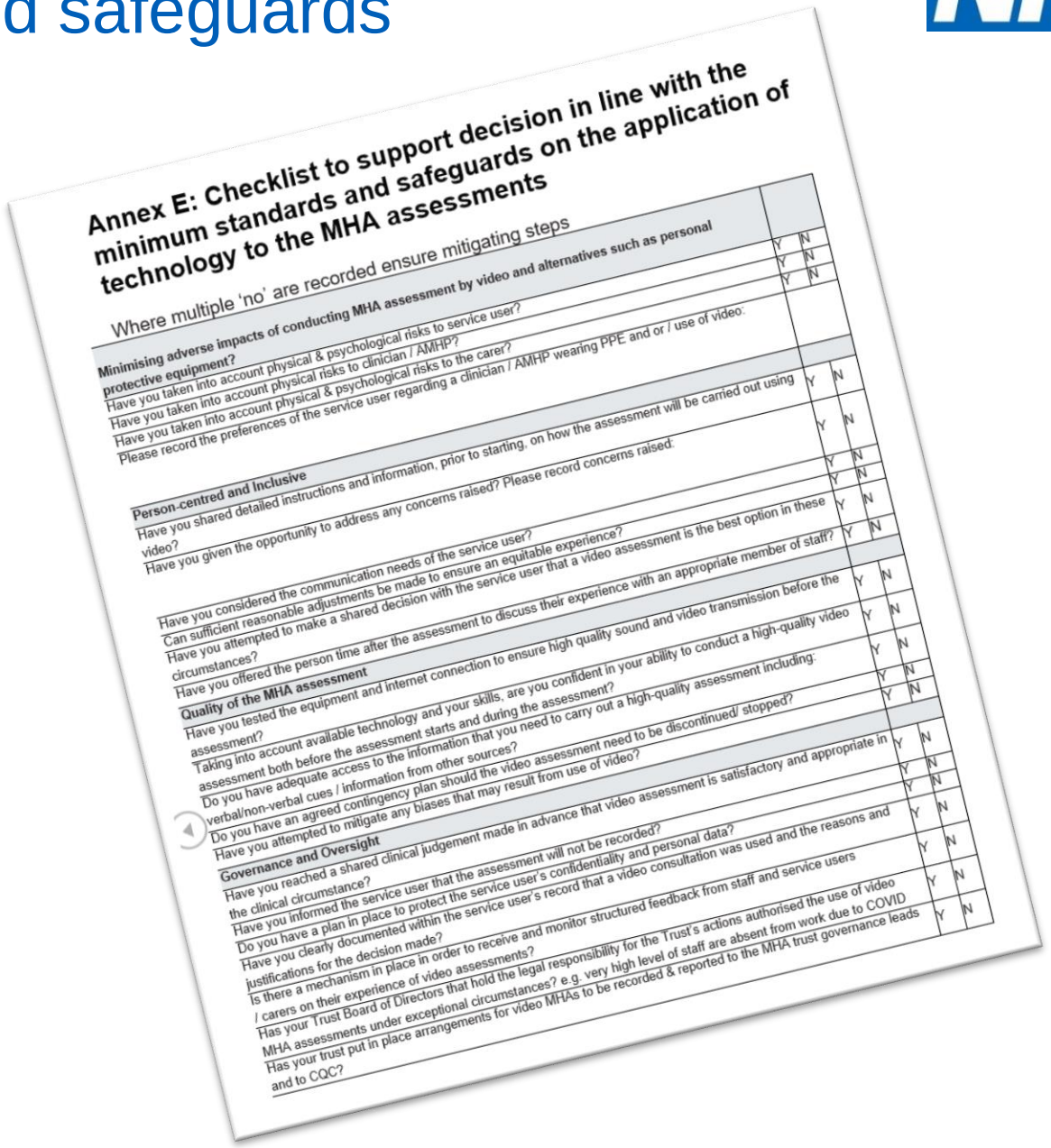
- ✓ Take time to understand specific communication and support needs of the person being assessed
- ✓ Involve the contributions of “knowledgeable informants” or members of staff with specialist experience or expertise
- ✓ Be aware of heightened risks of inequalities or risk of inappropriate detention that may be exaggerated e.g. diagnostic overshadowing
- ✓ Be aware that populations may be at heightened risk of digital exclusion and may not be confident or require additional support

Digital forms

Services may complete and communicate statutory forms electronically (including signatures – recommended secure signing) during the COVID-19 period. Providers should put in place an agreed protocol for electronic submission of statutory forms.

A checklist has been developed to support assessors in ensuring minimum standards and safeguards

- New way of working
- Vital that it is safe, consistent and well-governed
- Principles outlined in the MHA Code of Practice should remain foremost
- Steering Group developed a checklist to support decisions– this will be included in the published guidance



Annex E: Checklist to support decision in line with the minimum standards and safeguards on the application of technology to the MHA assessments

Where multiple 'no' are recorded ensure mitigating steps

Minimising adverse impacts of conducting MHA assessment by video and alternatives such as personal protective equipment?		
Have you taken into account physical & psychological risks to service user?	Y	N
Have you taken into account physical risks to clinician / AMHP?	Y	N
Have you taken into account physical & psychological risks to the carer?	Y	N
Please record the preferences of the service user regarding a clinician / AMHP wearing PPE and or / use of video:		
Person-centred and Inclusive		
Have you shared detailed instructions and information, prior to starting, on how the assessment will be carried out using video?	Y	N
Have you given the opportunity to address any concerns raised? Please record concerns raised:	Y	N
Have you considered the communication needs of the service user?	Y	N
Can sufficient reasonable adjustments be made to ensure an equitable experience?	Y	N
Have you attempted to make a shared decision with the service user that a video assessment is the best option in these circumstances?	Y	N
Have you offered the person time after the assessment to discuss their experience with an appropriate member of staff?	Y	N
Quality of the MHA assessment		
Have you tested the equipment and internet connection to ensure high quality sound and video transmission before the assessment?	Y	N
Taking into account available technology and your skills, are you confident in your ability to conduct a high-quality video assessment both before the assessment starts and during the assessment?	Y	N
Do you have adequate access to the information that you need to carry out a high-quality assessment including:	Y	N
verbal/non-verbal cues / information from other sources?	Y	N
Do you have an agreed contingency plan should the video assessment need to be discontinued/ stopped?	Y	N
Have you attempted to mitigate any biases that may result from use of video?	Y	N
Governance and Oversight		
Have you reached a shared clinical judgement made in advance that video assessment is satisfactory and appropriate in the clinical circumstance?	Y	N
Have you informed the service user that the assessment will not be recorded?	Y	N
Do you have a plan in place to protect the service user's confidentiality and personal data?	Y	N
Have you clearly documented within the service user's record that a video consultation was used and the reasons and justifications for the decision made?	Y	N
Is there a mechanism in place in order to receive and monitor structured feedback from staff and service users / carers on their experience of video assessments?	Y	N
Has your Trust Board of Directors that hold the legal responsibility for the Trust's actions authorised the use of video MHA assessments under exceptional circumstances? e.g. very high level of staff are absent from work due to COVID	Y	N
Has your trust put in place arrangements for video MHAs to be recorded & reported to the MHA trust governance leads and to CQC?	Y	N

Next steps for digitising the MHA pathway: we will continue to look at other aspects that could benefit from a digital solution

Annex C – Areas being explored for digitisation in support of MH Act processes-

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- ✓ Video assessments – work with a selection of trusts & CQC to monitor use
- ✓ Build lessons learnt for remaining interactions – NHS Future Platform
- ✓ Scope local challenges associated with workforce and resource management e.g. S12 doctors
- ✓ Ongoing work on legal documentation with DHSC, including Working Group and scoping implementation options

If you're interested in finding out more or are aware of any good local examples please get in touch!
rebecca.gate@nhs.net

Lessons learnt

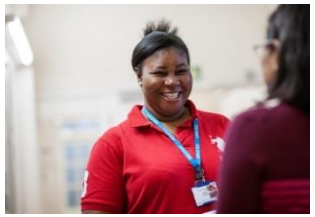
Carla Fourie, South London and Maudsley NHS Trust (SLaM), Director of Social Care

Changing Lives

NHS
South London and Maudsley
NHS Foundation Trust

Applying the Mental Health Act during Covid-19

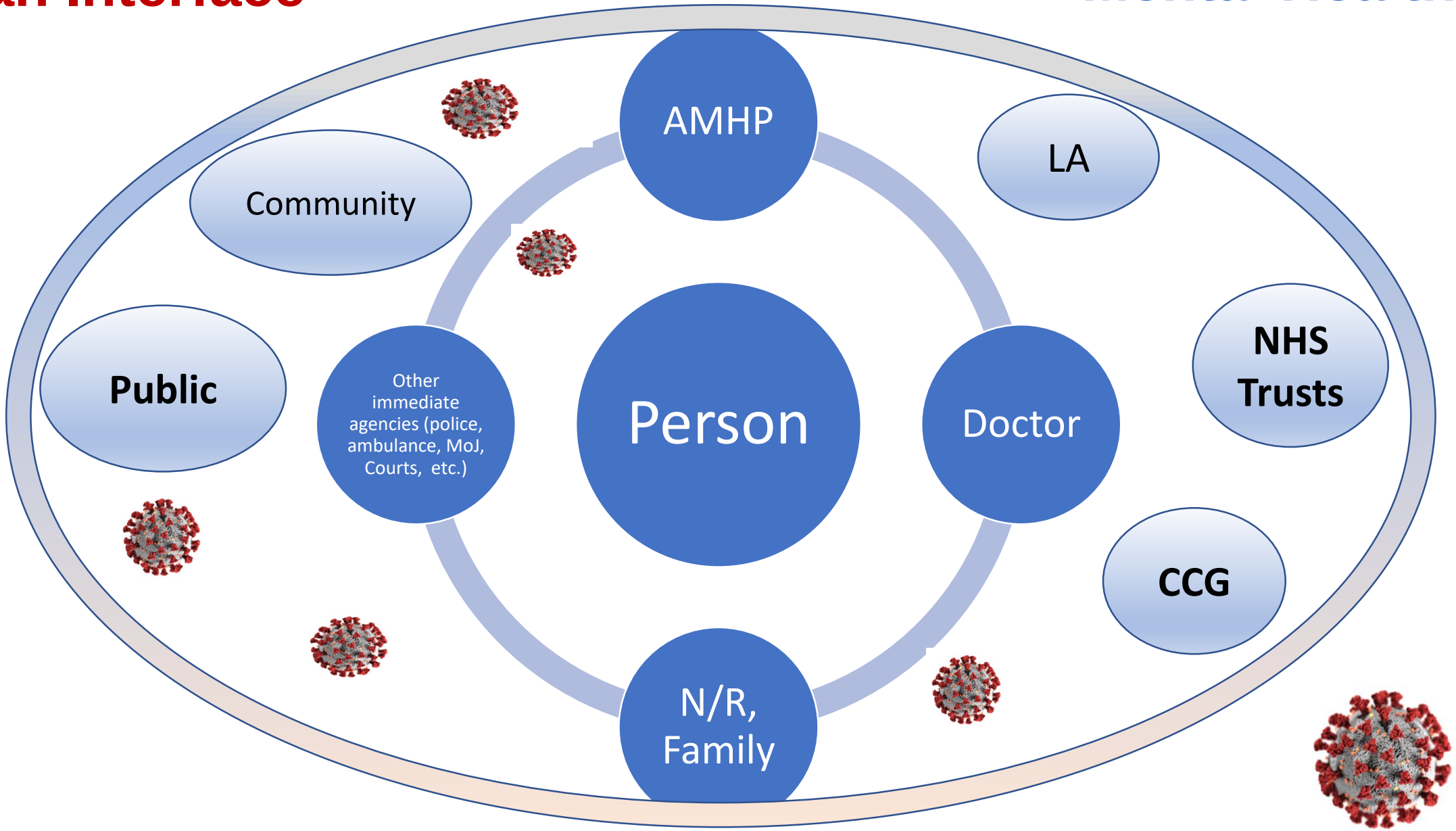
Carla Fourie, Director of Social Care



Human Interface

Integrated response

Mental Health Act



Partner response:
Mental Health Law and Covid-19

- **SLAM's Mental Health Law Committee**
- CV-19 Mental Health Law Sub-Committee (Clinical Lead - Director of Social Care)
- SLAM MH Law office
- CV-19 Clinical Ethics Committee
- SLAM Quality Centre – Covid-19 Learning Workstreams

Partner discussions, forums, MoU

- Directors of Adult Social Care
- Local Authority Mental Health Managers
- **AMHP Managers/ Leads**
- Partnership forums

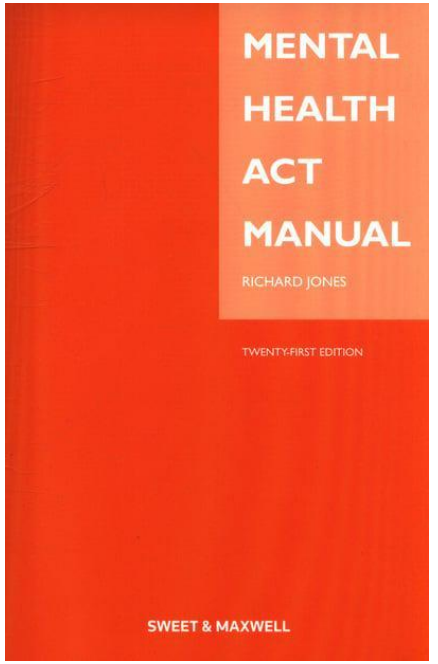
- **Croydon**
- **Lewisham**
- **Lambeth**
- **Southwark**

Agency Interdependence – CV19

- Agreement on the use of private ambulance for conveyance as part of infection control measures
- Regular discussions with police on the planning and support
- Courts
- Local Authority
- CCG and Trusts. Availability of Beds (or not)
- Community support offer – impact on least restrictive options?

Legal and other Frameworks

- Mental Health Act **(S11(5), S12(1), S13(2), Code of Practice**)
  Human Rights Act, MCA
- Emergency (and temporary) Coronavirus Act provisions
- Legal Advice –Trust and Local Authority (x4)
- Other guidance – e.g. Essex Chambers, NHSX, BASW
- Social Work England / Professional Standards
- Accessible Information Standard

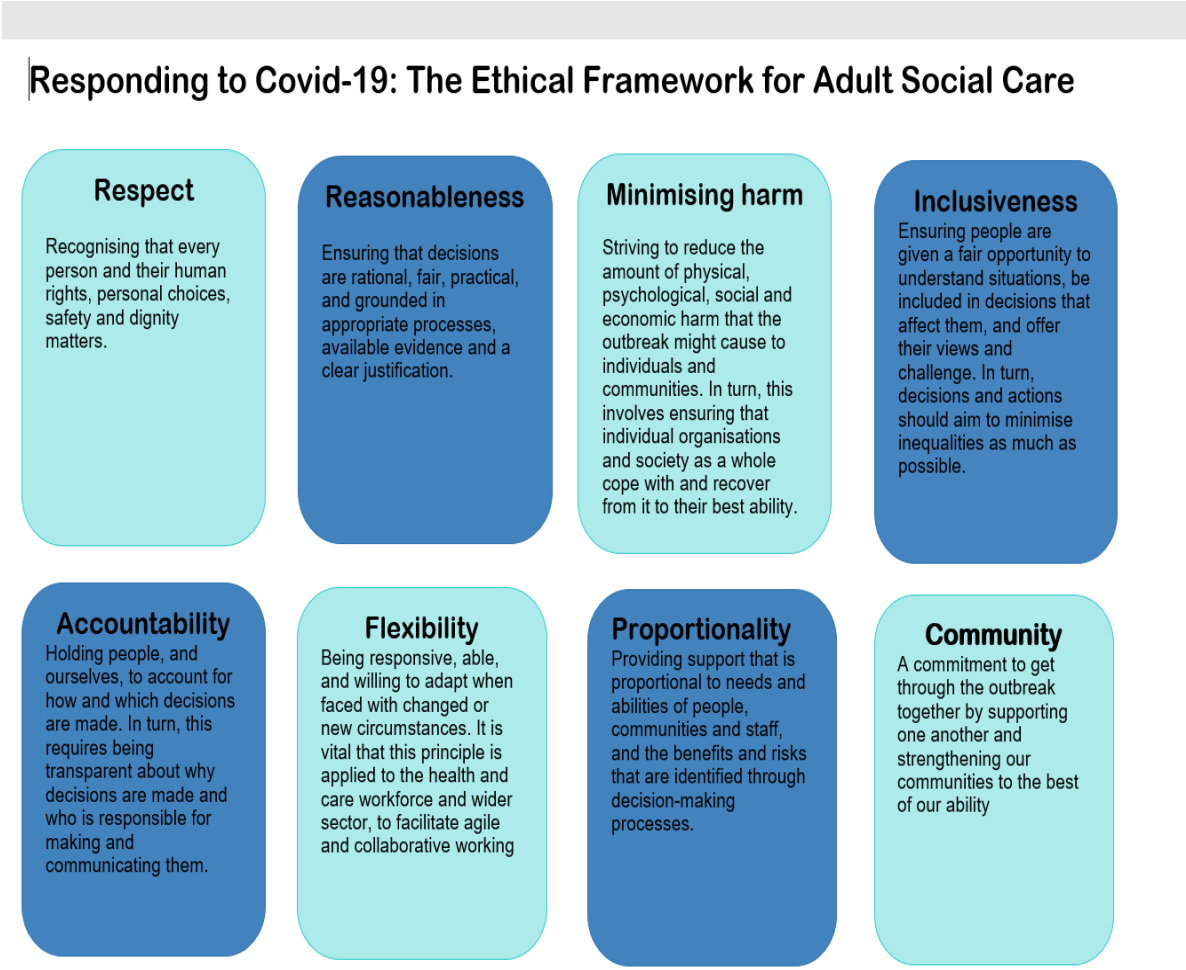


Principles and Ethical Considerations

Overarching principles in the MHA Code of Practice

AMHPs have a key responsibility to ensure that people's human rights are upheld and that the guiding principles of the MHA, as laid out in its Code of Practice (2015), are followed.

In R (Munjaz) v. Mersey Care NHS Trust [2005] UKHL 58 the House of Lords decided that the code cannot be departed from unless there **are cogent reasons to do so**. The current unprecedented public health crisis could be considered as a cogent reason for departing from the code in exceptional circumstances where agreed that virtual assessments are the safer option for all involved



Joint development of Guidance for AMHPs, and for Medical Recommendations

- **Significant harm through transmission** (reduced footfall to wards & care homes, CV-19 hot wards, shielded groups, self-isolation, use and access to PPE)

- **Significant Harm due to Unnecessary delays**

- Must be **robust digital technology** in place and a **suitable environment** that can enable a high-quality personal assessment to be conducted.

- **AND** the minimum **quality standards and safeguards** are met to ensure that a meaningful and high-quality assessment can occur in a safe environment

Challenges and Safeguards

- Infection Control considerations – government guidance and own personal experiences
- Quality of Technology and interoperability issues
- Person's views / capacity - highlights importance of person-centred assessments
- Environment – different settings/scenarios. Is one more optimal for virtual assessments than the other?
- Disputes between AMHPs and Doctors about when virtual assessments are appropriate
- Different groups of people with more complex presentations/ needs (learning disabilities, children, autism, hearing impairments)
- Quality – how do we monitor, how do we learn?
- **Digitisation of Documentation – clear processes must be developed**
- **Practicalities, practicalities!!**

Service user and carer perspectives views

- Overall supportive of virtual option for assessments where you can *'see the other person*'; not telephone

- Noting virtual consultations routine elsewhere such as in primary care and in courts.

- Service user A: Noted her own personal fear of an assessment surrounded by staff in full PPE: *"Have you seen full PPE? Imagine being unwell and questioned by that".*

- Carers: Offering video consultation to carers prior to assessment to support the process of ascertaining their views

Professionals Views

- **AMHPs**

Debates on Human Rights, Mental Health Act, Infection fears, PPE, Technology, digitalisation of forms

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Yes **Not optimum** **Never**

- **Section 12 doctors** – as above but more open to virtual assessments.

- **IMHA**

Patients are becoming more used to virtual meetings, and it may be more disturbing to some people to see doctors in full PPE, rather than via video looking "normal".

If a patient refused to engage with a virtual assessment, stating they would prefer face to face assessment, even if in full PPE, would they have that option?".

Monitoring

- Local Authorities collate daily/weekly AMHP sitReps

- **AMHP data sharing and monitoring across the system through centralised spreadsheet:**
- Covid-19 impact on AMHP availability
- Delays (AMHP, S12 doctors, conveyance, Beds)
- **Virtual assessments**
- Lessons learnt

- Over representation of certain groups (e.g. BAME)

- Escalation processes need to be clear

Continuous Learning and Quality Improvement

Quality Centre manages a programme of Covid-19 learning

Several workstreams with 3 month learning cycles

❑**Mental Health Law and CV-19 workstream (met daily/ now 2 weekly)**

❑**Experience of virtual assessments**

- **Co-production of learning**
- **Encourage local and continuous learning during CV19 and beyond**

AMHP forums

AMHP / Doctors forums

Maintain your CPD

Supervision

Q&A’s

Panel Guests

ANDY BRAMMER
AMHP, WAKEFIELD

BECKY GATE
NHSE/I

CARLA FOURIE
SLaM

HANNAH COAKER
DHSC

MATTHEW LEES
DHSC

MARK TREWIN
DHSC

RUTH DAVIES
NHSE/I

AOB & close

Mark Trewin, Mental Health Social Work Lead, DHSC

NHS England and NHS Improvement