

NHS England and NHS Improvement
Skipton House
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4 February 2021

To:

- Chief executives of mental health trusts and mental health providers
- COVID-19 leads in mental health trusts
- Regional directors
- Regional mental health leads
- Regional spec comm leads
- Regional learning disability and autism leads
- Regional health and justice leads
- Regional COVID-19 cells
- Regional directors of digital transformation
- Independent sector providers

Dear Colleagues,

In response to a number of helpful queries following the communication on Tuesday 26 January, we are updating the information previously shared, with the intention of providing as much clarity as possible. This information has been agreed with the Department of Health and Social Care (DHSC) and the Association of Directors of Adult Social Services (ADASS).

- 1) Devon Partnership NHS Trust sought a declaration from the Court as to whether remote assessments could be used to lawfully detain someone under the Mental Health Act (MHA). The Court's ruling was restricted to its interpretation of the phrases "personally seen" in s. 11(5) and "personally examined" in s. 12(1). It concluded that the physical attendance of the person in question (the AMHP and doctors) was required when assessing a person for detention under the MHA.
- 2) Based on this ruling it is advised that a Court would find a detention following a remote assessment carried out under s. 11(5) and s. 12(1) to be unlawful. I.e. assessments for detention/constraint under s. 2, s. 3, s. 4 or s. 7 (Guardianship) of the MHA.

3) Therefore, we advise that:

- There are no further remote assessments for detention/constraint under s. 11(5) and s. 12(1), i.e. for s. 2, s. 3, s. 4 or s. 7
- Anyone who is currently detained in hospital (under s. 2, s. 3, s. 4) or subject to s. 7 as a result of such a remote assessment should be reassessed without using remote technology as soon as possible.

The NHSEI guidance on conducting remote assessments during the pandemic period has also been redacted and will be updated in due course.

4) The Court did not rule on assessments or examinations made under any other section of the Act beyond s. 11 and s. 12. Therefore, we do not know whether a Court would find remote assessments under any other section lawful. However, in view of the judgement, providers/councils may wish to take a precautionary approach and stop all remote MHA assessments and renewals where the clinician or AMHP is required to 'examine' or 'see' the individual. This includes assessments and/or renewals under s. 20, s. 20(A) and s. 136, and therefore impacts s. 3 renewals, s. 37 renewals, s. 7 (Guardianship) renewals, and CTO extensions. It remains the case that the ruling does not directly apply to Part III of the Act, but for the reasons stated, there are potential implications for s. 37 renewals. Where providers/councils have further concerns, they should seek their own legal advice and decide next steps.

Yours sincerely,



Claire Murdoch CBE

National Director for Mental Health

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