



The Rt Hon Helen Whately MP
Minister for Care
Department of Health and Social Care
39 Victoria Street
London, SW1H 0EU

23 November 2020

RE: Update on policies for visiting arrangements in care homes

Dear Minister,

Thank you for your letter dated 20 October 2020, and for inviting our organisations to be involved in discussions around the care home visiting pilot. We are delighted to now be feeding into the working group for this and hope the pilot can progress at the rapid pace required to safely allow for increased visits to care homes in the immediate future.

Some of the concerns raised in our previous letter (09th October) have been addressed via two subsequent updates to the Department's guidance. In particular we welcome the recognition, firstly that maintaining visiting is critical for the health and well-being of residents, and secondly that all decisions about visiting need to be taken in compliance with the Equality Act 2010 and the Human Rights Act 1998.

Prior to the October 15th update to visiting guidance, we raised the profoundly detrimental effect blanket 'no visiting' bans were having on residents, leading to the mental and physical deterioration of many. A re-introduction of these restrictions, even for areas which may come out of lockdown into a 'high risk tier', will compound those effects for tens of thousands of people across the country.

We remain concerned about the way the revised guidance is being interpreted with the resulting widespread restriction or prevention of visiting. This has been accompanied by mounting evidence of the deterioration in health and wellbeing this is causing, not to mention the distress to residents and their loved ones. We respectfully suggest that these are matters which require resolution as a matter of urgency.

Therefore, we would like to make some further suggestions and recommendations for immediate inclusion in the post-lockdown guidance, as welcomed in your previous letter and during meetings of the visiting pilot working group.



The balance of risk

Although we recognise some of the limits to research at this time (such as studies taking place alongside the rapid introduction of new measures), the Scientific Advisory Group for Emergencies (SAGE) assessed the impact on deaths of prohibiting visits to care homes as 'low', and the non-COVID (i.e. social, psychological and emotional) impact on residents as 'moderate to high' (SAGE 58)¹.

Similarly, although we appreciate that age is the most dominant risk factor for coronavirus, the SAGE Social Care Working Group² recently summarised evidence of staff-to-staff transmission as 'strong', and evidence on the impact of visitors on transmission as 'weak'. There is also confirmation that although modelling of disease ingress due to visitors is ongoing, current studies have shown that allowing visiting has only a marginal impact on the introduction of cases in a home (SAGE 59).

The harmful effects of isolation on residents are well established and increasingly reported. Unless stronger evidence can be presented on the impact of visitors on care home outbreaks; we would again urge recommendations which do more to balance the apparently low risk of carefully monitored visitors passing on infection with the known risks of depriving residents of contact with their families before taking drastic measures which interfere seriously with their human rights.

Respect for human rights

We would welcome guidance which encourages a process of person-centred decision making for; and individual risk assessments of residents. It is also important that visitors are treated as equal partners in care, and existing equality tools are utilised, such as the Equality and Human Rights Commission's Measurement Framework for Equality and Human Rights (social care (core indicator))³. It is vital in our view that the language of the guidance moves on from recommending 'involvement' of residents in these decisions to recognising their right to have their preferences respected unless to do so runs a significant risk of causing avoidable harm to others.

We raised concerns in our previous letter regarding staff supervision of care home visits and were disappointed that this was initially formalised in the October 15th update. Although we appreciate the role of staff in physically supporting some residents, and more widely in ensuring infection prevention and control measures are adhered to; we strongly believe that supervising visits will deny residents their right to a private life. Additionally, this could

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925856/S0770_NPIs_table_pivot_.pdf

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/925141/S0780_Social_Care_Working_Group_update_paper.pdf

³ <https://www.equalityhumanrights.com/sites/default/files/measurement-framework-interactive.pdf>



create environments whereby residents are less inclined to raise safeguarding issues or issues regarding mental capacity or best interest decisions in front of staff members.

We welcome the omission of this suggestion in the latest guidance and would suggest that further updates maintain this position, while also committing the Department to write to Chairs of local Safeguarding Adults Boards (SAB), asking that they confirm homes are actively balancing the need to protect residents from infection, with both a resident's human rights and the impact of visiting restrictions on their wellbeing. This would provide assurance that human rights are at the heart of visiting policies and are being protected effectively.

We also welcome the clear reference from the October 15th guidance onwards to the Equality Act 2010; the Human Rights Act 1998 and the Mental Capacity Act 2005; but would again note that advice to providers and local Directors of Public Health in current guidance may seem to run counter to obligations defined in those pieces of legislation. Greater clarity as to which parts of this legislation remain unaffected by emergency powers, would be welcomed. For example, we have heard from local independent mental capacity advocates that in many cases, Mental Capacity Act assessments and best interest decisions have not taken place due to blanket 'no visiting' policies.

Blanket 'No Visiting' Bans

As mentioned there have been reports of Directors of Public Health and care providers imposing blanket bans on visiting. We would strongly urge the Department to discourage such restrictions in its guidance. Approaches which do not take account of the needs and preferences of individual residents would, we suggest, require very strong and explicit evidence-based justification before being adopted and will otherwise be contrary to the requirements of the statutes referred to above.

Media reports this morning that all care homes will be provided testing to allow for meaningful visits - regardless of local tier area - are to be welcomed if true. However, support must be in place to providers to allow for the rollout of this process and enable the allowance of visits as the default at all homes.

Facilitating visits where possible should be the presumption

The Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020⁴, in regulation 11(10) Exception 13, state that visits to a care home are lawful, where the visitor is a close family member or friend of the resident; journeys to make such visits are also allowed: regulation 6(6)(e) Exception 4.

⁴ 2020 SI No 1200 https://www.legislation.gov.uk/ukxi/2020/1200/pdfs/ukxi_20201200_en.pdf



We welcome this statement of law, and the subsequent recognition in the 05 November guidance, that:

“Receiving visitors is an important part of care home life. Maintaining some opportunities for visiting to take place is critical for supporting the health and wellbeing of residents and their relationships with friends and family”.

However, prior to the 05 November update, we heard reports of inconsistency in terms of visiting policies across the country. For example, one local authority previously in tier 1 recommended a suspension to all care home visits in their locality⁵, while three tier 3 local authorities were reported to have allowed indoor visits where individual risk assessments deemed visits appropriate to residents’ needs.

This latter group of local authorities developed their policies in line with the Department’s “Advice for providers when taking visiting decisions for particular residents or groups of residents” to allow safe indoor visits, both before and during lockdown. We would very much encourage greater prominence is given to this section in future guidance, so that providers understand the steps available to them to develop guidance appropriate to the needs of their residents. We also suggest that it is emphasised any examples of precautions are just that and are not intended to be limitations on what providers are free to decide is appropriate in their individual circumstances.

Again, support for providers here will be imperative to the facilitation of meaningful visits for residents and their loved ones.

‘End of Life’

A shared understanding of what is meant in guidance by ‘end of life’ would improve consistency among providers.

NHS England⁶ defines ‘end of life’ as referring to people in the last months or years of their life, while the General Medical Council’s definition⁷ refers to people who are likely to die within the next 12 months.

We have continued to hear reports throughout lockdown that ‘end of life’ is on the whole being interpreted by providers more restrictively than either of these definitions as the last weeks and days of people’s life. It is important that there is a shared and consistent definition of this term; otherwise it will result in widely differing approaches and advice

⁵ <https://www.gloucestershire.gov.uk/gloucestershire-county-council-news/news-october-2020/gloucestershire-takes-action-to-help-slow-the-spread-of-covid-19/>

⁶ <https://www.nhs.uk/conditions/end-of-life-care/what-it-involves-and-when-it-starts/>

⁷ https://www.gmc-uk.org/-/media/documents/treatment-and-care-towards-the-end-of-life---english-1015_pdf-48902105.pdf?la=en&hash=41EF651C76FDBEC141FB674C08261661BDEFD004



being advocated by local Directors of Public Health, and in how providers apply visiting policies for those with exceptional circumstances.

Next Steps

We look forward to continuing to work with the Department via the visitor testing working group and will continue to share our combined insights from staff, carers, providers, local authority teams, residents and their families and friends on all matters relating to care home visits. However, we would emphasise the need for urgent consideration of the matters we have raised in this letter.

We would also very much welcome the opportunity to be involved in discussions over out of home visiting guidance, which we understand to be in development.

Yours sincerely,

Sir Robert Francis, QC
Chair, Healthwatch England

James Bullion
President, ADASS

Caroline Abrahams
Co-Chair, the Care and Support
Alliance