



Department
of Health &
Social Care

*From Helen Whately MP
Minister of State for Care*

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20 October 2020

Dear Sir Robert, James, and Caroline,

Thank you for your letter and for the time taken to set out the concerns you have about visiting in care homes. I would like to reiterate my thanks to the adult social care sector for their huge efforts in managing what has been an unprecedented and difficult few months since the start of the COVID-19 pandemic; and for the strong leadership and joint working between the sector, providers and local government throughout.

I recognise how important it is to allow care home residents to safely meet their loved ones, especially (but not only) for those at the end of their lives. I wholeheartedly appreciate the particular challenges visiting restrictions pose for people with dementia, people with learning disabilities and autistic adults, amongst others, as well as for their loved ones.

As a department, we have sought to enable residents to be reunited with their loved ones wherever possible, while protecting all residents in a care home (and staff who work there) from Coronavirus. This is why we have set out guidance that enables visits to continue safely, to balance the risks and rights of the individual and the collective population of care homes. As you may well have seen over the past week, I announced that we are working on plans to test specific family and friends to allow them to visit care homes safely and are going to set out details in due course. Your support as we develop this policy would be most welcome, and I have asked my officials to ensure you are included in these discussions.

You highlight that blanket bans are something that we should seek to avoid; and you describe some providers taking an unduly risk-averse approach to implementing national and local guidance, which may have had this effect. As our updated care homes visiting guidance (15th October) points out, the impact of visiting on the health & wellbeing of residents, and the needs of individual residents should be considered when providers are developing their visiting policies. The guidance makes clear that even in Very High-risk areas, visits should be facilitated in exceptional circumstances, such as end of life.

You suggest that it would be helpful to set out clear expectations on providers, local authorities, residents and their families in the production of the visiting policies. Our guidance on visiting arrangements for care homes does just this, and we will continue to work across system partners, and with providers themselves, to support them in being confident to safely allow visits from family, friends and loved ones. We also welcome specific suggestions from partners and providers with regards to additions to the guidance.

I am also aware that trips out, such as those to a family home, are important to many residents and a part of their regular day to day activities. Guidance for this is currently being developed and will be published shortly.

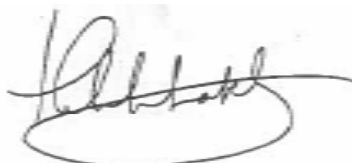
You also raised the issues of mental capacity and deprivation of liberty. During the pandemic, we appreciate that new arrangements in care homes, for people who may not have mental capacity to consent those arrangements, may be more restrictive than they were before, especially in areas where the local COVID alert level is high or very high. We have issued extensive guidance on looking after people who may lack mental capacity, here <https://www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack-mental-capacity>. This explains that the legal framework, including the important principles of the Mental Capacity Act 2005 apply during the pandemic, and offers advice to hospitals, care homes and local authorities, and others.

Our guidance explains the Government's view that in many cases where a person may lack the relevant mental capacity, changes to the person's arrangements will not constitute a deprivation of liberty and a best interests decision will be the basis for the decision made about the person's arrangements. If changes do constitute a deprivation of liberty, if a Deprivation of Liberty Safeguards (DoLS) authorisation is already in place, that may already provide the legal basis for the new arrangements. Limiting a person's visits from family members or friends to prevent the spread of the virus but enabling them to contact them virtually instead is unlikely to be a deprivation of liberty. If the individual arrangements were more restrictive, the authorisation should be reviewed during this period. If the existing authorisation does not cover the new arrangements or no authorisation is in place, a new authorisation or court order may need to be sought. We have also offered advice about how to seek an urgent authorisation during the pandemic.

When it comes to making decisions for those who may lack the relevant mental capacity, any decision made about a person's care must be made in relation to that individual, in accordance with the Mental Capacity Act. Decision-makers must comply with legal requirements which protect the person's rights and should always consider the least restrictive option for any person potentially being deprived of their liberty. Furthermore, when making a best interests decision, our guidance sets out that the decision-maker should ensure participation from the person, if reasonably ascertainable consider the person's past and present wishes and feelings, beliefs and values that would likely influence their decision; and seek the views of the person's family members and those interest in the person's welfare, if it is practicable and appropriate to do so.

I hope that you find this reply helpful and will work with my officials as we develop further policies to support safe visiting.

Best Wishes

A handwritten signature in black ink, appearing to read 'Helen Whately', written over a faint circular stamp or watermark.

HELEN WHATELY