HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: The Government’s response to Covid-19: human rights implications of long lockdown, HC 1004

Wednesday 14 April 2021

Watch the meeting

Members present: Ms Harriet Harman (Chair); Lord Brabazon of Tara; Lord Dubs; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; Dean Russell; Lord Singh of Wimbledon.

Questions 42-57

Witnesses

I: Professor Martin Green, Chief Executive, Care England; Jenny Morrison, Rights for Residents; Zac Taylor, Director, Quality and Practice, Mencap.

Examination of witnesses

Professor Martin Green, Jenny Morrison and Zac Taylor.

Q42 **Chair:** This is an evidence session of the Joint Committee on Human Rights. Our committee is concerned with human rights, as the title explains, and we are a Joint Committee of the House of Lords and the House of Commons. Half our members are MPs and half our members are Peers in the House of Lords. This afternoon, we are looking at the issue of human rights of residents in residential care and care homes. The two most important human rights that we are looking at in this context are the right to life, which the Government have a duty to protect for everybody, and the right to family life—everybody has a right to family life.

We are very grateful to the witnesses who have come to give evidence to us today on those two issues. We have Jenny Morrison, who is a co-founder of Rights for Residents, which is an organisation largely of relatives of residents of care homes and residential care. Thank you, Jenny Morrison, for joining us and giving evidence today. We have Zac Taylor, the director of quality and practice at Mencap, which is a charity for people with a learning disability. Thank you very much indeed, Zac, for joining us today and giving evidence. We also have Martin Green, the chief executive of Care England, which is the organisation of care homes. We are very grateful to you for coming.

I will start off with a question to all of you. The Government have obligations to protect the right to life. To what extent do you feel that the Government did all they could to meet this obligation for care home residents? We all know that there was a terrible death toll of residents in care homes and people in residential care generally. Did the Government do all they could to fulfil their obligation to respect the right to life at the start of the Covid-19 pandemic? What do you think are some of the main lessons from the last year for minimising deaths in care homes, and what could be done differently going forward?

It is interesting that the Prime Minister, when responding to the issue of deaths in care homes—perhaps Martin Green could reflect on this—said that “too many care homes didn’t really follow the procedures” in the way they could have. I presume he meant safety procedures. Do you think that was a fair comment? Were care homes not doing what was necessary to protect the right to life of residents, or did the Government have some obligations here? Do you think that has created a greater sense of caution among care home providers when it comes to relatives visiting residents? Could we start with Martin to answer that general set of questions?

Professor Martin Green: Thank you very much, Chair. First, I think we should acknowledge that, as you said in your introduction, there were huge numbers of deaths in care homes, particularly at the start of this pandemic. I was very confused and somewhat annoyed by the Prime Minister's statement that care homes did not follow policies and procedures. In fact, at the start of the pandemic there were next to no policies and procedures coming out of anywhere, certainly not from Government, on how to respond to this pandemic.

I think we should acknowledge that care homes are quite practised at dealing with diseases like seasonal flu and other viral diseases, so they have some good policies and procedures in place. The Prime Minister did not substantiate the suggestion that care homes did not follow procedures, and I do not know what his evidence base was for saying that.

At the start of the pandemic, care homes were pretty much abandoned by lots of bits of the system. For example, the NHS withdrew from care homes, and the mantra at the start of the pandemic was about protecting the NHS. That manifested itself in the withdrawal of a lot of primary care services to care homes. We also had acute providers saying that they would not admit people from care homes into their services. There was, of course, a desire to move people out of acute hospitals and put them into care homes, although that was done without a proper approach to testing. There is a suggestion that some transmissions may have come via that route.

On your question, Chair, about whether this experience has made people understandably cautious about things like the reintroduction of visiting, I would say that inevitably it has. We saw over 30,000 deaths, as I said earlier, and in some care homes staff were having to deal with the fact that they were losing perhaps six or eight of their residents within a very short time. I acknowledge that another part of that was that families could not be with their loved ones. That was extremely traumatic for families, but it was also traumatic for the care home staff. At the start of the pandemic, we had all these different issues and we were all struggling to see how we were going to work our way through them, because the death toll was significant.

One of the challenges was that we did not have up-to-date statistics on death rates. The ONS was producing statistics that were 12 days out of date at a time when there were 600 people a day dying in the NHS. I think that is why there was no real recognition, until the statistics started to be seen, of how much this was impacting on care services.

Chair: Thank you. Could we go to Zac Taylor now? I have to make a formal declaration of interest for you, Zac. Somebody you are related to is a member of this committee, although they cannot be present at this session for other reasons. It is not a financial interest or anything like that, so it is just a formality, but that is the case, is it not?

Zac Taylor: It is indeed.

Chair: Thank you very much, Zac. Mencap is involved not only with advocating for people with learning disabilities but with providing supported living accommodation. We should look not only at elderly people, which is obviously very important in this respect, but at people of all ages with learning disabilities. We look forward to hearing your response, Zac.

Zac Taylor: Thank you, Chair. You mentioned something particularly pertinent: people using supported living services. The guidance came out very rapidly and was not always timely, which gave us little time to enact it. It gave us a structure to work within, but it focused primarily on registered care, which is just one of the ways in which adults with learning disabilities use and receive support within the community.

A lot of our services, and a lot of learning disability services, are supported living. While registered care was receiving guidance, there was very little for us to look at to see how we should enact and put the same sort of control mechanisms in place for people in supported living settings. There was a deficit there. We did not know what people expected us to do, so we were required to make it up for ourselves. We had to wait some time for guidance, and that wait had a considerable impact.

It would have been very helpful for us all to have had clearer guidance very early on about what was expected for PPE and infection control, but it was lacking at the start, which made it very hard at a time when people were trying to cope with news from around the world about a pandemic and working directly with people one to one to know exactly what they needed to do to keep themselves and the people they support safe.

Chair: Thank you. Jenny Morrison.

Jenny Morrison: Thanks for inviting me to the meeting today. From the point of view of relatives, I echo what Martin said about Covid patients being discharged into care homes. The overriding concern and major driver was ensuring that hospital wards did not become overwhelmed, and Covid patients were discharged into care homes often without tests and often into care homes that contained very vulnerable elderly people and some younger people.

We also feel, looking back, that the Government ignored warnings at the time as to how far into the pandemic we were by the time we entered the first lockdown. I know that many experts have said since, and before, that we should have gone into that first lockdown at least a week earlier and that many lives, particularly in care homes, would have been saved. As the community transmission was rising, people who work in care homes were picking up the virus as they went to and from the care homes, which of course was not their fault. We did not understand so much about the pandemic and the coronavirus at that time.

One of the big things that could be addressed going forward is that care homes, such as the one my mum was in, rely on agency staff. Going through to maybe the second wave, agency staff were going from care home to care home and the virus was also being spread that way. In a way, that was out of necessity. Care homes were unable to do too much about that, because there was a shortage of carers, unfortunately. As carers were going off to isolate because they had contracted the virus, care homes had no choice but to employ agency workers. At one weekend in Mum’s care home during the Covid outbreak, the whole care home was staffed by agency staff who finished their shift on the Monday morning and then proceeded to another care home where they could introduce the virus. That must be addressed if we are thinking about learning lessons.

An area that has not been touched on so far is the number of excess deaths in care homes during the pandemic that need to be identified as not related to Covid. We know that there have been a huge number of excess deaths in care homes, and they are not all related to Covid. Many of them can only be put down to people who have literally died of loneliness and isolation. I know that some of the charities are doing work on this at the moment, but it is an area that needs to be addressed. Our organisation and many of the charities feel that, because of what Martin and you have talked about—the fear of Covid after these awful mistakes during the first wave—people were gripped by the fear of Covid entering their care homes.

We feel that that has affected all the decisions about visits that have been made since then, yet the Government did not address people’s concern that in locking relatives out completely people were literally dying of loneliness and isolation. They lost the will to live, they stopped stopping eating and drinking. These people had no understanding of where their loved ones had gone. People with dementia and cognitive impairments, and children with learning difficulties and disabilities, had no understanding of the pandemic.

We feel that the suggestion that some deaths were caused by anxiety and mental health issues will be borne out if there is a public inquiry. Those deaths were not prevented in the same way in which the Government tried to prevent deaths from Covid itself. Of course, they should have been doing that, but any death is awful, whether it is from Covid or from other causes.

Chair: Thank you very much, Jenny. Before we move to looking further at visiting and the right to family life, Lord Henley has a declaration of interest that he wants to mention. I think his sound is compromised briefly, so may I say that he has a relative who is in a care home and he has not been able to visit? It is obviously not a financial interest, but it is an interest to declare to the committee.

Lord Henley: That is correct.

Chair: Thank you. We will go on to Baroness Massey to ask the next questions.

Q43 **Baroness Massey of Darwen:** I want to ask about the impact of visiting restrictions on care home residents and their families. Jenny has mentioned this already, so maybe we can come back to her after I have asked Martin and Zac to comment. Martin, could you tell us about your personal experience and those of the people you represent?

Professor Martin Green: Thank you, Lady Massey. I think we should acknowledge that some visits were still going on at times and that, in some care homes that had the ability, outside visits or pod visits were still happening.

Part of the challenge was that care homes understood that they had to support the frailest people. They were very anxious, as Jenny said, to make sure that Covid did not get into their care home. Some care homes did very innovative things to try to maintain the contact, but Jenny put it brilliantly when she said that having a Zoom call or something is not the same as being able to be in physical contact with the person you love. Undoubtedly, and as Jenny rightly said, people with cognitive impairments did not understand what was going on. During this pandemic many people deteriorated significantly, so there was always the challenge of trying to engage people and make sure that their well-being was taken account of in the most difficult of circumstances.

Jenny mentioned the excess deaths. Undoubtedly some of those deaths were due to the isolation and disconnection from the people they love, but there was also a range of excess deaths that may have been because there were no interventions by the NHS when people got things like UTIs that might previously have resulted in them going into hospital. It was a very tough time.

The point that I really want to drive home is that people were still trying to maintain contact even if they could not have physical contact. We should also acknowledge that it is much easier to do this in some care home environments than in others. Some care home environments might have the capacity to do outside visits or to have bits of the care home separated and very clearly identified as visitor areas, but for others that is very difficult to do. There is range of different physical environments in the care sector.

Baroness Massey of Darwen: Thank you, Martin. That is very helpful. I will move on to Zac. What have some of the specific challenges been for younger care home residents, particularly those with learning difficulties?

Zac Taylor: As Martin just said, one of the challenges is the nature of the settings that people live in, which are akin to family homes. We are not talking about large spaces with plenty of rooms where you can partition a room or set aside a room for visiting. These are small family homes, with four or five people at most living together. It is a lot harder to put in the protection and the Covid-secure type standards that would be expected to facilitate visiting in those circumstances. People with learning disabilities who we work with have missed seeing their families and friends as much as they should.

We found ways, using risk assessments, of putting support in place for people so that they could still visit, but there might be no space inside for someone to visit, or no outdoor space. As the weather got colder, after we moved from a nice warm summer to a cooler autumn and winter, it was a lot harder to have visits inside.

Technology, such as video calls, was an option for some people, and some people could do window visits. There are various ways to be creative, but, as already been said, they are not available to everyone and it is particularly difficult for some people. Learning how to use new technology, such as video, to speak to your family member is particularly tricky for some people, and it is tricky for family members too, when all you really want to do is spend time being as close as possible to the people who are nearest to you.

There has been a distinct loss of connection with family, although organisations across the country have done the best they can to sustain it. It has definitely had an impact on people's emotional well-being, and people are worn out by it.

Baroness Massey of Darwen: Could you say a bit more about children and young people with various difficulties? We have heard from other witnesses we have talked to about this that there are serious problems with this.

Zac Taylor: I work generally with adults, people between 18 and 65, so it would be hard for me to talk specifically about children. Sorry.

Baroness Massey of Darwen: That is okay. Jenny, do you want to add anything?

Jenny Morrison: Yes, Baroness Massey, I would. There has been a huge impact on the mental health and well-being of residents and relatives. The idea that we are protecting people from Covid, which we had to do, has blinded people to what has happened as a result. The cure—trying to have a visit outside a window or via a Skype session—became worse than the virus in many cases. My mum has advanced dementia and she cannot use the technology. We have been forced to stand outside a closed window at times, the time limited unbelievably to 30 minutes, trying to communicate with somebody who does not recognise who we are.

I was an essential part of Mum's care before she went into a care home. My partner, my two sisters and I cared for her at home, and when she went into care that care did not stop. We had busy lives, and I ran my own business, but we still found afternoons and full days in the week to go and visit Mum. We gave her mental health support—sharing memories, playing music, singing, reading poetry, doing her nails—all the things that, no matter how well-meaning paid carers are, they simply cannot do. They cannot replace that care. We feel that the Government took away that care in an instant.

We did not feel that reams of families should go into care homes in the middle of a pandemic, but we did feel that there should have been a balanced approach to all of this. We feel that the Government should have ensured that where it was required, where it was wanted or needed, as residents began to decline, at least one close family member could still maintain that vital contact with a resident who had perhaps stopped eating or drinking. In the first lockdown, for example, my mum stopped eating. She could not feed herself, she could not drink, she stopped speaking. She was constantly anxious and cried a lot—all things, to be fair, that we had never really seen before—and the speed of that setting in was unbelievable.

Having said that, however, now that we are allowed to see Mum again it is amazing how we have managed to overcome some of the deterioration, but we relatives all feel that we have had to watch for over a year now as our loved ones have deteriorated. It has been like grieving for people who were still alive. We watched them from windows, pods and the other side of the screen. People do not sleep. They are anxious, their jobs are affected, they have suicidal thoughts. They are constantly anxious about their loved one in a care home.

This is about human rights today, and we understand that residents have to be protected. Everybody has a right to be protected, but their mental health and well-being should be protected just as much as their actual physical well-being.

Baroness Massey of Darwen: Thank you all very much indeed.

Chair: Jenny, what you were saying about agency workers going in and out of homes denotes a lack of focus from the Government about the right to family life and a lack of understanding about the caring role of relatives. There was the immediate barring of relatives, when agency staff were able to go in and be in the same room and have physical contact. You have given a very heartfelt example of why the right to family life is a human right. If that had been focused on at the time, we might have not had the deterioration that everybody has acknowledged has been inflicted on many people who were not able to have their relatives visit them.

We move on to Lord Dubs for the next questions.

Q44 **Lord Dubs:** Over the last year, several care home providers implemented blanket bans, or what were effectively blanket bans, on visits to residents, contrary to the right to respect for private and family life under Article 8. Did some care home providers get the balance wrong between protecting the lives of residents and respecting the right to private and family life? Could we start with Martin on that one, please?

Professor Martin Green: Thank you, Lord Dubs. I think we should remember that some of those blanket bans were imposed by, for example, public health directors within local areas who, despite the fact that some guidance came out from the Department of Health, issued their own guidance. There seemed to be no understanding in government about which guidance had supremacy over the other.

Also, in some local lockdown areas, for example, you were not allowed to visit your niece, who might live on the next road to you. Similarly, some care homes were locked down in that way. There was a lot of confusion and a lot of different statements coming out of different bits of government.

Care homes have a primary responsibility to maintain the safety of their residents. At the time of this pandemic, when we were seeing so many people dying of Covid, I think they decided that they had to maintain a very closed environment where possible and not have as many people coming in and out of the care home.

Zac Taylor: I agree with Martin that there was confusion about which guidance had primacy. There was a difference between what was coming out nationally and locally, and there was also an impact from local lockdowns. Our starting point as an organisation was to think about what is best for the individual, rather than where they live—so trying to balance the right to life and the right to family life. We are a large enough organisation, so it was easier for us to do that than it might have been for others.

In an organisation where you have support and people around you, it is simpler than it is in a single care home standing on its own to have those discussions and to come to a conclusion about how you will apply that sort of guidance. If I had been the manager of a care home standing on its own, it would have been a very difficult, psychologically, to make those decisions.

Q45 **Lord Dubs:** In calling on Jenny, could I add another question? In answer to an earlier question, you talked about the views of Rights for Residents. Do you think those views reflect the majority of the families of care home residents, or might some families, on the other side of the argument, be more reluctant to have care homes opened up to visitors?

Jenny Morrison: Thank you, Lord Dubs. That is a really important point. It is also a point that we have taken account of and tried to discuss with care providers and anybody who will listen.

The point of all this when you are thinking about rights is that it is about balancing the different views and different sets of rights of different people. The Government have said that care homes should take an individual approach to all this. In the care home where my mum lives now, for example, there are some relatives who do not want to visit their loved ones. They do not feel that the time is right for them, so they are choosing not to visit. But we feel that the views of the relatives who want to visit, and of residents who have capacity, have not been listened to. The only sorts of risks that have been addressed in the last 13 months, with some guidance changes, are the risks of Covid.

Unfortunately, we have had a blame culture over the last 13 months. It has all been about who is to blame for all of this; who is to blame for the deaths in care homes. As Martin and Zac have said, care home managers have been gripped by fear, because they are worried about what will happen if Covid enters a care home. But when you think about risks you have to balance the risk of Covid against the huge deterioration in people's mental health and well-being, and that has not been addressed. We say that we are keeping people safe, but we should be thinking about keeping people safe from all risks and not just from Covid. People choke in care homes and have falls, for example, but we do not just put them in a bed all day and make sure that they do not move because they might have a fall.

When somebody is at the very end of life—we are talking about the last year of life for the majority of people in nursing and care homes—the quality of that life is just as important as the quantity of life. People also have a right to a good quality of life. We feel that in large part we have kept alive for 13 months people who are just existing. They are just getting through the days.

Because of the risk of Covid, care home residents for a lot of the time have been doubly isolated. They are isolated, often for 24 hours a day, in a tiny room. People like my mum cannot watch television, switch on a radio or read a book or a magazine. She cannot walk out of a room or feed herself. She really has no rights to choose anything. The one thing that would make her life better would be to see a member of her family, and that right has to be balanced against the rights of other people who do not want visitors to come into a care home.

It is a complex issue, but I feel that the priority has been to keep people safe from Covid, and if we are to learn anything it is that we need more nuanced solutions to these situations. Some care homes have been managing visits as far back as last June and July. I can give you evidence of those care homes. They made that judgment against government guidance, because they saw that the impact on the residents was too severe. If the Chair wants evidence from those people, I can supply it. They realised that they could not continue to watch people wasting away, so they had conversations with the relatives. You are right: not all relatives wanted to visit a care home. So they had Zoom meetings and they communicated with relatives and had discussions. They started allowing a number of relatives in, not all relatives, and in limited numbers, because they are very mindful that we are in the middle of a pandemic. It can be done.

Different situations can be managed within the same care home. The Government have now said that care homes should be conducting individualised risk assessments for visiting for every resident, but unfortunately, even now, that is not being done in a lot of care homes. We are still getting blanket policies where visitors or residents are allowed one 30-minute visit perhaps every two weeks. I do not think that the balance of risks is right, and people's rights have not been taken into consideration.

Chair: Thanks very much. It would really help us if you could give us evidence of the homes which, as you have explained, have tried to balance rights. We move on to the next question from Baroness Ludford.

Q46 **Baroness Ludford:** Thank you very much to all the witnesses. I have found this evidence very moving. My own mother was in a care home for the last three years of her life until 2015, and I cannot help thinking about her.

I take the point that was made in the last discussion about confusion and clashing guidance and so on. However, picking up from what Jenny said at the end, it did seem that many providers were reluctant to undertake individualised risk assessments and preferred blanket bans. Indeed, I think I heard an exchange on the radio earlier this week about outside visits and some care homes still imposing a blanket ban.

Could you comment on what the challenges were to care homes undertaking individualised risk assessments in communal living environments? Do you think that these can always be meaningfully overcome? I will start with Zac this time, just to switch around.

Zac Taylor: I would like to make it clear, because I probably have not said it clearly enough, that we have not had a blanket ban on visiting at all. We have used risk assessments throughout, right back to the first lockdown. We looked at the regulations and the guidance and recognised that the regulations gave us the opportunity to consider how you support people to get the best possible care for their well-being. We have been using risk assessments throughout, but it is difficult in communal living where you cannot offer the same opportunities to everyone who shares the same home.

Thinking about the guidance as it stands, or as it has stood, and thinking in particular about things like support bubbles, you could have offered one support bubble to a group of people. If we had five people sharing, with a couple of parents who were living alone, you could offer the support bubble to the parent, but it could be only for one person. At that point, you would almost be discriminating against the others, so you could only ever focus on what you could actually offer and make it fair to everyone.

The risk assessment process is the right way of doing it. It is about looking at the risks on the basis not simply of safety but of well-being—lack of quality of life, lack of engagement, lack of participation, lack of connection to the people in the world who are most important to someone. We have used it and we have used it well.

The difficulty comes when the decision is not necessarily the one that is preferred. You cannot replicate that for everyone who lives in the house. If you have four people and you cannot replicate the same thing for everyone, it becomes difficult to say yes to one person if you cannot say yes to everyone, so we had to look for alternatives.

We looked at the closest possible alternative. If you cannot do an indoor visit, can you do an outdoor visit? If you cannot do an outdoor visit in a garden, could you do one in a park as a walk with someone supporting the person, so you have a third person to support to make sure it works well? If you cannot do that, what is the next step? You can use those processes and be creative about thinking about the outcome that you are trying to achieve. The difficulty is when you cannot replicate it for all.

Baroness Ludford: Thanks very much. I will ask Professor Green next.

Professor Martin Green: Thank you, Lady Ludford. Zac clearly outlined some of the challenges. It is a significant logistical challenge in care homes where there might be 60 or 70 residents who have to be managed in that way. As Zac said, you also have the challenge of some people wanting some things and other people wanting other things, and in communal settings it is very difficult to satisfy everyone. I think that the vast majority of care homes have been doing individual assessments and have been maintaining visiting in some care homes, as Jenny said, even through the pandemic, and finding creative ways in which that can be done, but it is not simple.

The other challenge is that lots of bits of the system will wade in if anything goes wrong. Nobody will challenge if you reinstate visiting and it all goes well, but if you reinstate visiting and suddenly there is an outbreak of Covid, you will have the Care Quality Commission and a range of other bodies, including public health directors, challenging what you did and why you did it. There are some very complex issues at play here.

Baroness Ludford: Before passing to Jenny, perhaps I could follow that up and try to home in on what factors were really influencing care homes to have blanket bans. How much was it really to protect residents, and how much were there other factors that we need to be quite clear about, like insurance costs, the reluctance of staff, the availability of appropriate facilities, the availability of testing and of PPE? How much weight would you give to all those other factors?

Professor Martin Green: Definitely all the things you have listed were factors, Lady Ludford. Insurance is a major issue that we have been discussing with the Government for a long time, and we have had no resolution other than for designated settings. The PPE issue is a really good one. We now have access to PPE, but at the start of the pandemic we did not. There was also a great deal of concern among staff about the implications for them if there was an outbreak and they went home to their own families. Some of those issues were at play. In your list, Lady Ludford, you identified other factors that were at play at the time. That underlines how complex this is, but it does not detract from the implications and, as Jenny has eloquently outlined, what this means not only to the residents but to their families.

It is also important to acknowledge the impact on relatives' well-being. I spoke to somebody in her late 80s whose husband was in a care setting. She had previously gone to see him every day. That was not possible now, but she was living alone and the impact on her was enormous. At the start of the pandemic, it was decided by government edict that visiting should not happen. Despite the fact that there were great attempts to maintain connections, it was still not the same as being with that person. We should also acknowledge the impact this has had on relatives.

Baroness Ludford: Thank you. Jenny, would you like to come in?

Jenny Morrison: Yes, thanks, Lady Ludford. Martin and Zac have talked about the difficulties of balancing different needs within one setting. It is very complex, and we understand that. Martin has just given a great example of somebody who previously visited the care home and offered essential care daily, and for some people it might be several times a week. As I said, that essential component of care has been removed.

Prior to the pandemic, not every resident received or would necessarily request that level of support. However, at times when rules have been relaxed, we have had to watch carers, who are predominantly in the age group between 20 and 50, going out and about to pubs and shops. They have children who go to school, their partners work, and they are exposed to many risks. They then go into care homes and look after our loved ones. They go into every room in a care home and offer personal care to residents. There is a huge risk of them introducing Covid into a care home, which of course is predominantly how Covid is getting into and did get into care homes.

Yet people like me and other relatives who would like one member of the family to offer some essential well-being support are predominantly aged between, say, 40 and 80. In the main, we do not have school-age children and are very cautious and do not want to take Covid into a care home. During the pandemic, I have worked at home and have not really socialised that much, because I have always been mindful that there will come a time when Mum may become ill and I will have the opportunity to see her and be with her in the care home, particularly if she is at the end of life. I would not want to introduce Covid into a care home, and I would not want to have a positive test that would bar me from entry to a care home.

For quite a long time now, we have had PCR tests and lateral flow tests, and all the PPE that we need now. We have temperature checks, which staff and residents can also take, and relatives can be trained in how to use all the infection control procedures when they enter a care home. Unlike the staff, if we were supporting a relative we could go directly into the room of a loved one—not offering personal care to all the other residents or mixing with anybody else in the care home, just sitting in the room with our loved one offering vital support. We feel that that could be managed for people, because we are part of their care. We are not just visitors or somebody who comes maybe twice a year or once every three months to see their grandmother. That is a visitor.

We feel that every resident should have the right to see an essential visitor, or what we call an essential carer, and that such visitors should be viewed as an extension of the care staff. It is not an added extra for somebody to help somebody who has dementia, who is in distress every day, or a child who is separated from a parent or parents who used to see them virtually every day or every weekend. Previous to the pandemic, they were just part of the care team. They offered a different sort of care.

Care providers can talk about how we can manage all these visitors coming and all these different needs, but there needs to be a definition of a visitor and an essential visitor. Essential visitors should be allowed to see a loved one in distress or at the end of their life in almost any situation. People in our group have been forced to watch a loved one die through a pane of glass. That is inhumane, and it is surely not acceptable.

The Government have said that individual risk assessments should be taking place, especially for people who need essential care givers. We are finding widespread defiance of that guidance, and care providers keep insisting that they will not allow essential care givers as defined in the guidance because they are not trained or insured to offer personal care to residents, when it states clearly in the guidance that essential care givers can visit their loved ones purely to offer mental health and well-being support. The Government never intended essential care givers to go in and provide personal assistance and personal care. That is one element of what the Government have said an essential care giver is, but it is not the only reason why a resident would require an essential care giver.

Martin and Zac mentioned the insurance question, and we had a lot of sympathy with that when we started our campaign. However, we have to look at the care homes that are managing visits now and allowing essential care givers to support their loved ones in care homes, and ask: how come they can do it and others cannot? I am not really sure, because we are not getting an answer to that question. Is it just that some people understand that relatives are important to somebody’s mental health and well-being, or is it genuinely a question of insurance?

Baroness Ludford: Thank you very much. They seem to be very good questions.

Q47 **Chair:** I will follow up in two respects. Martin, do you feel that the reluctance of some staff to look favourably on visiting might be partly because they fear that if they get a positive test for Covid they would lose income? I guess this might be even more of an issue for agency staff, but it is also an issue for directly employed staff. Do you feel that that has been an issue?

My second question is to you and Jenny. What Jenny said just now seems to me so important for those providing residential care. Professor Green, do you meet with Jenny Morrison? Do you know each other? Do you work together?

Professor Martin Green: I think we have a meeting coming up, but we work very closely with the Relatives and Residents Association. We also work with John's Campaign. In fact, Care England sponsored the book *Honoured Guests* about visiting in care homes. We have a long-standing commitment to making sure that people in care homes are supported by their families. As Jenny put it so well, just because your family member goes into a care setting does not mean that you are any less their carer. You are probably the most important relationship in their life, and we are really anxious to maintain that. That has to be something that we are all focused on as we come out of this pandemic.

On your question about staff, I think there is a multiplicity of reasons. Some will be concerned about resource and whether they will lose out. I think there will be far more who are concerned about what might happen if they got Covid and took it back to their families. Of course, there are a lot of concerns about the people they support in the care settings. I was talking to some care workers recently who had lost eight members of their community within the space of 48 hours, and they were going through what might be considered as a professional bereavement. As they said to me, these were people they knew well and liked and had established relationships with, and they were trying to come to terms with their bereavement. I think there is a lot of that in decisions that are being made.

This differs from the issue of insurance. Some groups, for example, have several-year agreements with their insurers and have not had to renegotiate a yearly agreement around Covid. I think we should acknowledge that some people are in very different spaces with regard to insurance.

Chair: Thank you. On to the next question, with which we start look at the new visiting guidance, which Jenny has already briefly alluded to. Lord Brabazon, could you put your question?

Q48 **Lord Brabazon of Tara:** My question relates to the new visiting guidance. Some new guidance was issued in March but, more importantly, new guidance was issued last week, which came into effect on Monday and allows care home residents to have two visitors plus young children.

To all of you, does the new guidance go far enough for families of residents? What are your views on the process that led to the drafting of the guidance? Were care home providers consulted sufficiently in advance? I have a supplementary to Professor Green after I have heard those answers.

Professor Martin Green: I think that the guidance itself was probably not consulted on nearly as effectively as it could have been. We found that guidance was sometimes rushed out. There has been a tendency for the Department of Health and Social Care to issue guidance on Friday evenings at 7 o’clock. Zac made the very important point that it does not give people a lot of time to digest the guidance, particularly when it is being implemented on the Monday afterwards.

Jenny will be able to tell us whether or not the department has had much contact with relatives’ organisations on how the guidance was developed, but in general on the issue of coproduction of things I think the department would be well advised to seek the advice of a range of stakeholders, including people such as Jenny, Zac, me, colleagues in the United Kingdom Homecare Association, and others.

We have not talked a lot about home care, but that is another big issue. I think we have to get to a point where there is more coproduction, because the more people there are who are involved in the development of guidance, the better the guidance will be. We saw disasters at the start of this from organisations such as Public Health England, which produced loads of guidance that sometimes had to be amended twice in the same day because it was delivered by people who did not know what they were writing the guidance about. In general, we need to look at that.

I think we are in a space where this new guidance must be backed up by the requisite access to regular testing, for example. I hope it will be backed up by the fact that the majority of care residents will have had their second dose of the vaccine, and I hope a lot of care staff will have too. All the mitigating factors need to be taken account of, because, as Jenny has pointed out, it is so important for the well-being of residents that they have connections with their families, but we also need to make sure that that is safe and does not reintroduce Covid, particularly new variants that are prevalent in places like south London, for example.

Lord Brabazon of Tara: Jenny, do you have any comments about these new rules?

Jenny Morrison: Thank you, Lord Brabazon. Martin is right to say that people need to work together, and it was interesting that the Chair asked whether we had spoken. One of the frustrations for relatives and some residents is that there has been a breakdown of communication, I think in large part due to the frustrations over the visiting situation. Martin is right to point out that people like me and those in our group, who are directly affected by the visiting restrictions and what has happened in care homes during the pandemic, have not been involved in any of the decisions or consultations about the guidance.

It is very frustrating. We feel that the people who are involved in drafting the guidance are much further removed from the situation than they ought to be. Many of the large charities are invited to the meetings and committees where guidance is worked out, and they are sent drafts which are then sent back. At no point are people from relatives' groups or residents' groups invited to those discussions, and we feel that that should change.

It would also help if, as Martin said, organisations and people like us started to communicate with each other, especially the larger care groups, because I think it is fair to say that there is a large-scale defiance of the guidance. We have lots of evidence, which we could send to you, Madam Chair, of flouting of the guidance. Instead of blanket bans, we now have blanket visiting policies. The Government have made it clear that blanket visiting policies should not be allowed and that individualised risk assessments should be conducted as outlined. In fact, it says in the guidance that during the individual risk assessment "decisions should involve the resident, their family and friends and the provider and other relevant professionals such as social workers or clinicians". We find that that is just not happening.

Many care providers are saying that they have done a risk assessment and have decided that the visits that people want, meaningful visits, will not be allowed and that essential care givers will not be nominated because they cannot be insured. We are at a loss as to why people would need to be insured to go and hold the hand of a loved one who is in distress or to play music to them or help with their mental health and well-being.

That guidance is not being followed. As the guidance is only advisory and not mandatory, it is literally up to the individual care companies and providers as to whether or not they will follow it to the letter, despite what the Government have said, and despite what we saw on TV when the Government announced that from 12 April two people will be able to enter a care home and have meaningful visits and take grandchildren.

We find that a large majority of our members are only receiving 30-minute indoor visits, perhaps in a communal area. Sometimes they are supervised, and even end-of-life visits are still being monitored, for example for anything between an hour or 90 minutes a day. The Government have repeatedly asked care providers to view their end-of-life definition as people who are in their last year of life, but inevitably the majority of care providers are interpreting end of life as the last few days and hours of someone’s life. In many cases, people are only being informed maybe in the last 48 hours that they can visit because their loved one is at the end of life, so there is little time to say goodbye or offer comfort to people in their final days.

There is a final point about the Government’s guidance on visiting out of care homes, which they have also just released. We feel this is blatant human rights abuse, because they have said that people can now have a visit out of a care home—they can go for a walk in a local park or find an area that is not too populated, or they could have a coffee with a loved one outside a local cafeteria, for example. But despite the fact that they have virtually all had two doses of the vaccine, and probably all relatives have had at least one dose of the vaccine if not two, they are forced to isolate for 14 days on return to the care home.

The Government have acknowledged in their own guidance that that fact will probably deter many care home residents from wanting to take this option. It seems incredible to us that people, including carers who are looking after our loved ones, are now meeting up in gardens in groups of six and households of two, getting their hair cut, going to gyms, and yet our loved ones—let us remember that they have spent 13 months in isolation, virtually—cannot go out and enjoy a spring afternoon for two hours where there are no other people, maybe in a local park, unless they agree to come back to the care home and isolate on their own in their own room for 14 days. It is inconceivable, because most of them have been vaccinated. My mum has been vaccinated. She has had two doses of the vaccination, which we are told gives people 95% protection, and we have PCR tests and lateral flow tests that we can use when people come back to the care home. So this seems a bizarre violation of people’s rights.

On that subject, people will soon be voting. Are care home residents not allowed to go out? Some residents are still able to go out and vote. Some people who live in supported living and assisted living facilities could go out to vote, but unless they are prepared to isolate for 14 days on return they will be forced to decide that they cannot vote. It is another denial of people’s liberties. All these things add up to care home residents being treated almost like another race, second-class citizens, as if their liberty is not important.

Q49 **Lord Brabazon of Tara:** Thank you very much. I had not been aware of the 14-day isolation. It does seem to be something that we need to look at more closely.

Professor Green, your Care England organisation published a statement of principles setting out the approach that you feel the Department of Health and Social Care should have pursued when drafting its guidance. Could you tell us more about that?

Professor Martin Green: Yes, certainly. We wanted to establish these principles, which are based on human rights principles, because we wanted to balance the issues that we have been talking about this afternoon, such as the well-being of residents, with their physical protection. I should say that we were doing this at a time when there was no new guidance coming out of the Department of Health, so it was an attempt to help members to understand some of the conflicting issues and to try to navigate their way through them. Of course, new guidance has now come out.

Jenny mentioned the 14-day rule for out-of-home visits, which is frankly ridiculous. It means that people will not be able to do out-of-home visits. That is a big issue, and I am sure that Zac will want to talk about this. It is a particular issue for people with learning disabilities who often stay with their relatives or go out as students to colleges or to workplaces. We have to try to find something workable here. Given what Jenny said about the fact that the majority of people have had two vaccinations, we should recognise that that gives people a lot more protection than we had at the start of this pandemic.

Chair: Martin, could you clarify the point that Jenny forcefully raised about the price you pay for a visit that includes going outside the home but which is then penalised by 14 days' complete isolation thereafter? Is that just something that individual homes are doing, something that is being laid down by local directors of public health, or is this in the government guidance? Where is this rule about 14 days?

Professor Martin Green: It is in the government guidance. That is a big impediment, and I am sure Zac will have a lot to say about that.

Chair: We have the Health Minister coming to give evidence to us. That is something we can pursue with her.

Zac Taylor: I agree with Martin that 14 days' self-isolation is very inhibiting for many people and is very hard practically to do, particularly when you are talking about small homes where people have a bedroom and share communal facilities. It is unnecessary, and there are other ways of arranging it. The intention is to prevent people spending too much time together in a place where they could share the virus, but the 14-day self-isolation is inhibiting.

It is worth noting that in the new visiting guidance this applies to registered care homes. If you are an adult living in a supported living setting, you currently cannot have visitors because the general population is not allowed to have visitors. The guidance for supported living as it stands is that there are no visitors into homes.

Thus there are still contradictions between adults who have similar supports, similar families, similar lives but who live in a different type of regulated setting. The access they can have to their families and to other people in their lives is different. People in supported living may be able to go into the community, but they cannot at the moment have people into their homes in the same way as other people in registered care would. That is an important distinction.

Chair: Very important.

Q50 **Lord Singh of Wimbledon:** Good afternoon. I am a Cross-Bench Peer in the House of Lords. To what extent has this new guidance made a difference to the practices of care home providers? Could each of you give your views from your own experience? Zac, could you start?

Zac Taylor: Yes. In some cases it has made the approach that we have taken clearer, but it is not right; it is not finished yet. We based our approach on the regulations, but historically the guidance has conflicted with the regulations on a number of occasions—for example, on enabling people to visit homes, and on being close to people in homes to offer care and support when it is needed.

The new guidance supports our approach of using individual risk assessments, which is what we have done throughout the pandemic. The guidance has not made that perfectly clear, but it has improved the situation and given us greater confidence that the approach that we have taken is right. The guidance is not yet consistent across all settings. There is a considerable difference between the guidance for supported living and the guidance for registered care, but it is definitely moving in the right direction.

Jenny Morrison: Thank you, Lord Singh. The difference the new guidance has made depends on which care home you are in. It goes back to the idea that the ultimate decisions will be made by the care home manager and the care company they work for. The small care homes make their own decisions.

What we have at the moment, unfortunately, and what we have had all the way through is a postcode lottery. Some people are getting some very good access. Some care homes are maybe allowing two nominated visitors to visit for an hour each a week, or possibly in some cases together, with the addition of their loved one also having the support of an essential caregiver who goes in to have longer and more regular visits. Some care homes are allowing visits out but not many, to be fair, because people do not want to go against the government guidance. A few brave care homes have said, “We’re allowing people out. We won’t make them isolate on return, and we’ll take the consequences”.

Lord Singh of Wimbledon: Would it help if the guidance was framed in terms of minimum standards: that you should achieve at least the two people visiting and so on, but if you can do more you should?

Jenny Morrison: A difficulty arises in interpreting the guidance if there is too much discretion in it, which there is now, even on minimum standards. It becomes a subjective view. As Martin and Zac have also said, each facility is different. We believe that unless the government guidance can be legally enforced, people will still suffer discrimination, and some residents will get some meaningful access with their loved ones but many unfortunately will not. That is what we have seen all the way through.

I would be the first to say that the government guidance has improved and that there are many parts of it that are very clear, such as: people needing support from essential caregivers; the fact that the definition of the end of life is the last 12 months; every resident should be treated individually; and you can have different rules for different residents. However, I fear that, because it is not mandatory and it is just advisory, and as long as it remains that way, many care homes will continue to disregard it or to cherry pick the parts of the guidance that they want to run with and ignore the other parts.

If we had some minimum standards, which is a good suggestion, the difficulty would be in enforcing the guidance. Many of our members and many relatives, and even other organisations, have had meetings and produced evidence for the CQC, the regulatory body, to show how people are blatantly ignoring the guidelines or refusing to implement them, and it says that it is almost powerless to do anything.

We have sent lots of evidence of breaches of guidance by some of the largest care groups. The CQC says that one of its difficulties is that unless people are prepared to name a care home, or if they want to remain anonymous, their complaint or concern cannot be taken forward. It says that it has had very few official complaints about compliance with or beaches of the guidance, even though it has been contacted by many, many relatives who are concerned in a general way. It is difficult to see how you could get people to comply with the guidance without legal enforcement.

Professor Martin Green: My position differs somewhat from Jenny's. Because of the diversity of the sector, the differences in various parts of the physical estate and so on, and the differences in the level of frailty of some of the residents, some decisions have to be made by providers, but the starting point should always be that they will do everything they possibly can to reinstate visiting at the point when it is safe to do so. I believe that care providers are adopting that approach in this very difficult time. I hope that as we start to come out of lockdown, as more and more people are vaccinated and we also start to see less infection in the local population, we can get back to something like normal.

Of course, the other challenge is that ultimately the care provider will be accountable for anything that happens. There is no way in which you can take away the accountability of the care provider. That is also something that we need to consider.

Q51 **Chair:** Can I ask a question that follows on from the points that Martin and Jenny have made about compliance? The Government put out the guidance. Who do you understand to be monitoring compliance with the guidance? Jenny has talked about disregard of the guidance calling for individual risk assessments, and Martin has talked about compliance with the guidance. Whose job is it to be clear about whether or not the guidance is being complied with?

To follow up the point about the CQC saying that it cannot look into things if the person is not prepared to give their name or the name of the home, do you think there ought to be some sort of ability to give information anonymously in order to expose problems without exposing the residents or their relatives, a sort of whistleblowing situation to help drill down into what is going on with the visits? Whose job is it to look into concerns and whose job is it to monitor compliance?

Professor Martin Green: It is not about compliance, because this is guidance, not legislation. I am sure the Care Quality Commission will have a view and will be finding out how particular providers have responded to this and making a view about that known when it comes to make its assessment.

Chair: Can I cut in here, Martin, to try to get from you an understanding of what guidance means to you if there is no such thing as compliance or non-compliance with it? We are not talking about legal compliance; we are talking about compliance with what is suggested in the guidance. What is the point of having guidance if it means nothing at all?

Professor Martin Green: I am not saying that it means nothing at all. I am saying that it provides a framework within which people can aspire to making sure that the objective of the guidance is delivered in the most effective way possible.

Chair: Do you mean that it is just like advice: “Hey, why don’t you think about this being the framework?”

Professor Martin Green: I do not think that, and I think it is better if you let me answer the question. The issue for me is the fact that guidance gives a framework, but there is a range of other things that are not guidance but law, which care providers have to comply with. The right to safety, for example, is a legal requirement. If guidance conflicts with that legal requirement, it will be for the care provider to decide that it has to comply with the law, not the guidance. We should be very clear about that.

Care providers are trying to navigate an extremely complex and difficult area. We have heard this afternoon just how difficult and how complex it is. I go back to a point made at the start of this meeting that 30,000-plus people have died of Covid in care settings. That understandably makes people extremely cautious about whether there will be another outbreak of Covid in their services.

Lord Singh of Wimbledon: Chair, can I butt in, first to thank you for coming in and to apologise to Professor Green? I have had trouble with my internet, which suddenly cuts out. My apologies again.

Jenny Morrison: What Martin has just said sums up our frustrations with the guidance. Many providers say that the things that we are asking for, meaningful visits, cannot be done because there is this issue and that issue, that this setting is different and that setting is not appropriate or, as Martin said, they will allow visits when it is safe to do so. They will allow people to provide care when they feel it is safe to do so, but that is a subjective view of somebody who is not related to the person who has the human right to a family life. Where is the right for their family to decide when it is safe to visit?

When we talk about keeping people safe, we go back to the idea of balancing risks. Martin alludes to something that many, many care providers say, which is: “We’re keeping people safe”. But we have already talked in the session about the need to keep people safe from many things apart from Covid, including deterioration due to their mental health and well-being suffering because they are isolated from their families.

Martin also said that we cannot forget that 30,000 people in care homes died of Covid. I do not want to forget that, and nor should we forget that. But already during the pandemic over 130,000 people have died in care homes of all sorts of diseases and illnesses, including Covid. While 30,000 people have died of Covid, almost all of those 130,000 people have died after having had no meaningful contact with their families in their last weeks, hours and months. I go back to the idea of what are we keeping people safe from—from life, from living, from enjoying the things that make them happy or that give them a reason to live? I do not feel that that is keeping people’s mental health and well-being safe.

Martin said that the guidelines are something to aspire to. I do not know of any other industry where government guidelines are to be aspired to. I feel that government guidance is there to be followed. That is surely what the Government and their guidance are for. You asked, Madam Chair, “Do the guidelines mean nothing”? Many residents do feel that the guidance means absolutely nothing. The guidelines have no legal standing. If a care provider does not want to implement any parts of the guidance, there are no consequences for them.

Q52 **Chair:** Following on from that, Jenny, and I will ask Martin too, this committee has drafted a statutory instrument that would put into law some of the issues that we have been talking about: the requirement not to have a blanket ban but to have a risk assessment in relation to each visit and to designate individuals as part of the care team for that purpose. Are you in favour, Jenny, of having it put into law so that it is not just guidance but a legal obligation on this sector?

Jenny Morrison: Yes, absolutely. We absolutely feel that there should be legal rights for residents and for their relatives, not for every member of a family to go into a care home during an outbreak but for at least one member of a family to go in and provide essential care, which is the emergency legislation.

Chair: Would you like to see it clarified in law?

Jenny Morrison: Absolutely.

Chair: Professor Green, you have talked about how there is a lot of pushing and pulling with different factors at play, including insurance policies, local directors of health and so on. Would it not help if there was clarity by way of this statutory instrument? Is your organisation in favour of putting this into our law? Are you aware of this statutory instrument?

Professor Martin Green: I am aware of it.

Chair: Are you in favour of it or against it?

Professor Martin Green: I am in favour of it if you put it in the context of being clear about which bits of current legislation, responsibility and accountability need to change. For example, you might then say that the care provider will not be responsible for the safety of the individual if their relative has decided that they will make that decision. I am absolutely in favour of this as long as it goes through all the contradictory pieces of legislation, pulls them all together and identifies which thing will take priority over other things in the legislative context. Sadly, Parliament very seldom delivers laws like that.

Q53 **Chair:** This has been drafted by our very excellent team of counsels to our committee, so you can be absolutely sure that it is top-quality, clear legal drafting and would make things clearer rather than more confusing.

Can I ask you both about the Care Quality Commission, because we are seeing it in evidence? It has responsibility, as its name suggests, for the quality of care. Jenny, you have made it very clear, and it has been backed up by Professor Green and by Zac Taylor, that the ability to see family is very much an important part of a person’s quality of life. Complying with guidance and responding to it properly is surely part of each care home’s responsibility.

The Care Quality Commission, when we wrote to ask it how many providers are complying with the new guidance, and how many are not allowing visits under blanket bans, it said that it does not collect data about that. Therefore, it says that although it is aware of a growing number of concerns about possible blanket bans, it does not have information about what is going on. What do you think of that?

Also, what do you think about the CQC’s ability to respond to people’s concerns, to look into and monitor people’s complaints, to have a helpline and to follow things up, anonymously if necessary? How helpful is the CQC being in all this, or is everybody just getting on with things in their own way, trying to work it out as they go along?

Professor Martin Green: My view is that the fact that it does not have that data tells me that there is a real problem with data in social care. It should be the sort of data that the Care Quality Commission collects.

I also have a view, which I could wax lyrical about, that we have the wrong approach to regulation. I would like to see much more investigation of critical incidents, listening to the voices of people who provide care, the people who use services and the voices of relatives, and then trying to work out ways in which you could improve the whole system by disseminating the lessons and the messages, rather than a rather punitive approach whereby it identifies something in a service, tells that service is, "We didn't like A, B or C", but then it goes no further. I think we should be moving to the airline-industry model, which looks at the critical definers of an incident. Then it should be saying, "How does this work better for the whole care sector?"

Jenny made an interesting point when she said there are care providers who are allowing those visits, who have decided to step outside the guidelines, or were able to before we had the guidance. It would be great if we had a regulatory body that looked at the facilities that enabled providers to do that, and then made information about that available to everybody else. In that way we could see continuous improvement across the whole system.

Chair: What about complaints?

Professor Martin Green: The CQC has a whistle-blower mechanism. There is an opportunity here for the organisation to listen to the voices of people who are not happy. The initial responsibility for the management of complaints should be with the care providers, who should be responding positively to those complaints, but in every situation people also need to have somewhere else to go.

I have long advocated for an older people's commissioner, not only in relation to residential care but in relation to a raft of services where older people find themselves very disadvantaged. A commission that could look at those sorts of issues would provide an opportunity for older people to have a voice, as they do in Wales. There may be times, for example, when relatives have a complaint against the Care Quality Commission. Where do you go when you have a complaint against it? We have to get to a more open approach to looking at critical incidents and how we learn from them. That is the approach I would like to take to regulation.

Jenny Morrison: I think Martin is right in a lot of what he has just said. I agree with a lot of it.

Specifically on the visiting situation, we have spoken to the CQC about the continuation of blanket policies. The CQC has made a lot of statements about the fact that it has been looking into blanket bans, and it is certain that, for the most part, care homes are not operating blanket bans now. If a care home is offering all residents a visit in a care home for 30 minutes—the same type of visit in the same type of setting—or if residents are allowed to have a pod visit for 30 minutes for example, it is technically allowing visits but is not allowing visits in line with government guidance, which states that visits now should be in person; they should be face to face. Blanket policies should not be happening now because, as we have discussed, every resident should have an individual risk assessment.

Rights for Residents has met with the CQC on several occasions, and we have provided it with a lot of written evidence, including letters from care providers, in which they have very clearly and publicly outlined their blanket visiting policies. They are not even particularly trying to hide the fact that there are imposing blanket visiting policies. We have sent that evidence to the CQC.

Chair: What has happened thereafter in relation to those individual care homes?

Jenny Morrison: The CQC says that it is very difficult to tackle the larger care corporations, because it needs to tackle complaints at the level of individual care homes. Yet it told us two weeks ago that it has a corporate team that meets regularly with the larger care companies. We have forwarded many of these blanket visiting policies to the CQC and have asked if it will investigate them and meet with the relatives to discuss what is happening.

As Martin said, the CQC has a feedback form on its website, so if people have concerns about anything, including visits, they can fill in a feedback form. Some of the responses to the feedback form are, as we have said: "If you're not prepared to name the care home or you want to remain anonymous, we can't escalate this as a complaint". We have a situation where relatives are absolutely terrified to be named or to name the care home, because while there are some amazing, brilliant care homes and care home managers, companies and staff, evictions from care homes are unfortunately on the increase.

Chair: Should it be required to say to the person who has the concern, "Make the complaint and we'll keep you anonymous"?

Jenny Morrison: People have done that, but the CQC says that it can only make it an official complaint if they are named. The other thing is that, where people have named a care home but have remained anonymous, in a care home that has, say, 30 residents and only one or two visitors causing a fuss or demanding or asking for visits, it is quite easy to identify people. In many cases, people will not even identify the care home. A lot of our members have been told by care home managers that they can no longer meet the needs of their loved one, or that if they do not like the rules perhaps it would be better if they found another care home for their loved one.

Chair: You are saying that people asking for compliance with the government guidance risk the resident being chucked out of the home.

Jenny Morrison: That is it in a nutshell, and it has happened quite a lot. Many residents might be quite happy in their care homes, except about the visiting situation, and they might have been there two years or three years. It is understandable that somebody would be ultra-cautious if they felt that their complaint might lead to their relative being removed from the place that they know as home if their relative suffers from dementia or other cognitive conditions or is anxious, or is a young child or a young adult with difficult and challenging behaviour.

Chair: Thank you. Could we hear from Zac now, because in relation to residential care you are covered by the CQC, are you not?

Zac Taylor: We are, yes. We support people in residential care. The CQC is certainly asking the questions when it comes to visits. It is important to remember that it is still out there doing infection prevention control audits and visiting, and assessing the ability to comply with a visiting policy is definitely part of its process. The volume of visits is still small. People have been very cautious about visiting over the pandemic, so the numbers are a lot less than they would have been pre-pandemic.

It is the organisation’s, the care home’s, responsibility to enact the risk assessment, but it is the CQC’s responsibility to see that it is working. We cannot be both the people enacting and the people measuring our own work. That is important. Having something that allows us to use the regulator or to use guidance to be measured by others is really important. It gives us, the people we support, the families, visiting professionals, our colleagues—it reaches many people—an assurance that there is a baseline that is being met, so there is a need to use that.

Q54 **Dean Russell:** My question is primarily to Professor Green in the first instance and then to Zac and Jenny. What else would be needed to ensure that visits are not restricted unnecessarily, especially looking forward? Obviously we are coming out of lockdown now and the measures are easing, even though I appreciate the comments today. What should we be looking at now to ensure that care home residents are still protected? In particular, are there any specific measures that should be put into place for care home residents with learning disabilities?

Professor Martin Green: My view is certainly that people with learning disabilities should not only have access to visiting but should also, as Zac has said, be able to go into the community, as they do often, to see relatives, to go to college, to go to their workplace and so on. That might require, for example, more staff time. There might have to be capital improvements because, as Zac said, in some of the smaller homes the problem is very much about not having large spaces.

Of course we do not want to turn community settings into large, more institutional settings. That is what we have tried to get away from, particularly for people with learning disabilities, so the situation is complex. That does not mean that we do not try, and it does not mean that we do not try to get to a point where we can re-establish life as normal.

Similarly, in older people's services, one of the things we should acknowledge is the numbers of people. Because of the way in which older people's services are commissioned and delivered, we are looking at units that may have 70 or perhaps 80 residents, and you have to think about how much extra work there may be in some of the support that is necessary to ensure that visiting can take place safely. We also have to get to the issue of testing, which we are very well advanced on now, and the issue of PPE.

Jenny made a point about people who have cognitive impairments and dementia. It is sometimes very frightening for them to see somebody who might be covered in PPE coming towards them. It is somewhat necessary in order to protect them from the virus, but it can be quite frightening. It also puts up a barrier to the way in which people would normally want to visit with their relatives. We have to find ways of getting to a point where we can reinstate normal visiting in a safe way.

There are some interesting developments. There are some new products coming on to the market that give 24-hour protection against the virus being transmitted on hard surfaces, for example. These are relatively new products, so we must make sure that those are available. The more we can get that sort of thing in place, the less we will have to resort to the quite special measures of having to wear full PPE. It will be a process that we will go through, and hopefully we will be back to something much more akin to normal in the not too distant future.

Dean Russell: Can I ask you the same question, Zac?

Zac Taylor: I would like to start with what Martin said about people losing access to the community. The people we work with are of working age. Such people have lost access not only to people coming into their homes. In many cases, because they may need to shield, they have lost access to participation in the communities they live in. They may have lost jobs or significant valued roles in the community. People have a significant need to be out and to be part of the community again and not be seen only through the eyes of their vulnerability. The things that help us get to that—to visiting, to people coming into their homes, to going out and being a participant in the community—are important.

Recent changes in testing and the announcement towards the end of last week of the availability of lateral flow tests for the wider population are significant. We think they could lead to greater opportunities for people. For example, concerns about taking Covid into a building inhibiting people from visiting could be negated, and with the vaccine giving people better protection against the virus we should soon be in a better place.

With specific regard to how to improve things for people with learning disabilities, we need to engage with people with learning disabilities themselves and ask them what is next for them. Involve them in the planning, involve their families in the planning, and recognise the need to make the guidance accessible and meaningful and not just a set of statements that are intractable and unreadable for many people.

Q55 **Dean Russell:** On that specific point, I am also on the Health and Social Care Select Committee, and yesterday we interviewed witnesses about autism and learning disabilities. Do you think that the past year has highlighted issues, which have been around for a long time, to do with visiting for autistic people and people with learning disabilities? It seems to me that some of the lockdown stuff about visitations, about patients going into inpatient care for long periods of time when perhaps families would have preferred them to come out sooner, has highlighted those issues in general, apart from as lockdown issues.

Zac Taylor: I think it has exacerbated them. It has spread that problem to wider communities of people who are using more intensive supports and entering places that you described where there were difficulties with access for people, and people have rightly been trying to address that. The inability to access and spend time with their families and those people who close to them has been widened a lot during lockdown. People with learning disabilities are a group of people who have definitely been impacted more considerably.

Dean Russell: On that point, one of the points I made yesterday was whether the problem was with the government guidance or at the care home level, especially for that particular group. It felt to me that it was almost "See no evil, hear no evil and report no evil". I got the sense that some practices were happening on the ground that perhaps were not necessarily coming into the public consciousness, whereas now they seem to be. What are your thoughts on that?

Zac Taylor: Certainly the CQC has commented much more strongly on what it is describing as closed cultures—cultures where people are not treated fairly or are treated poorly by others and where the culture is of staff support, the support of the staff team, as opposed to support of the individual. The CQC is looking at that more closely, which is a good thing.

I find it hard to comment beyond the provision I work within, which is that, if that were happening, we would all seek to address it. It is not something that we would tolerate, because we are working with people's lives. The focus of what we should be doing, and all we should be doing, is improving the quality of life for individuals—for the people we support, the colleagues I work alongside, and the families who are related to the people we support. Our work is about improving people's quality of life. I worry that anything we do could inhibit that.

Dean Russell: Thank you. I appreciate your comments on that. Jenny, may I ask you the same question? In particular, moving forward, what specific measures should we have, particularly for those with learning disabilities?

Jenny Morrison: One thing in relation to visits during the pandemic is that there has been a communication breakdown between care providers, in the main, and relatives, because of the frustration and anxiety about being locked out and because of care providers' and managers' fears about the virus entering the home. There has been a lack of communication throughout the pandemic, which needs to change. People need to find channels of communication. The Government and care providers need to open dialogues with the relatives and residents affected, so that we can learn lessons from how the visiting situation unfolded and how we could do it differently.

We think there may be more variants of the virus, and there certainly could be another surge. There could be further outbreaks and lockdowns, and it is really important that we stop viewing relatives purely as sources of potential infection rather than looking at the benefits that regular contact from at least one member of a family could bring, not only to the resident but to the care home.

I am talking not just about families with young adults and children in care, although that is important, because parents play a large role and are normally hands on in their care, despite them being in a residential setting. In my own case, for example, when I go in as an essential caregiver to see Mum, a member of staff is freed up to spend time with another resident or to do other duties. I feed Mum, I make sure that she takes liquid, I entertain her. I am in that care home for maybe three or four hours, and the care home staff have told me and other relatives, "It's just great to have people back, because we were literally on our knees trying to get around the number of residents who need feeding, who need somebody to hold their hand for five or 10 minutes". They cannot do it.

My plea is to change the perception of relatives' visits as a problem to seeing what they could bring to the care home by freeing up very hard-pressed staff and by changing the perception of care homes themselves as places where people are not allowed in. Care homes can develop a closed culture, there is no doubt.

Q56 **Dean Russell:** Thank you. I appreciate the personal aspects to your reply as well.

I have a follow-up question that relates more to what is being reported in the press. How much truth there is in it is never quite clear. It has been reported more broadly that care home workers in England could legally be required to have a Covid-19 vaccination, in plans that are being dubbed the "no jab, no job" policy. Do you think that would help, or would have helped previously, to make sure that workers going into all care homes are duly protected for themselves and for those in there?

Professor Martin Green: My view is that if we are going to have this policy, it needs to be applied across the system. For example, you might have a situation where all care home workers have had the jab but somebody comes in from primary care who has not, or somebody goes to a hospital and they return to the care home and the people in the hospital have not had the jab.

We should also acknowledge how many care-home staff have been vaccinated, and we must make sure that we push forward to make sure that they all have their second dose of the vaccine. Some of the press discussions about the vaccine have been particularly unhelpful. The care providers have been doing a huge amount to try to encourage staff. In the majority of cases the levels are quite high, but there are some areas where there are small numbers who do not want the vaccine. It is a decision for the Government as to what they decide to do about legislation.

Zac Taylor: It is worth saying that as an organisation we are pro-vaccine and we are strongly encouraging people, but we do understand that some colleagues have concerns about it or may have been advised by a doctor not to have it. We prefer as an organisation to encourage take-up, and to tackle reservations through giving people the right facts and talking them through it, rather than to mandate vaccination as an organisation. We have been using resources for that, including the DHSC resources and the myth-busting content that has been provided. That has been really useful.

For us as a provider, we think that encouragement and persuasion are the best course of action and, if necessary, that the Government should mandate it rather than put pressure on care providers to take unilateral action.

Dean Russell: If I understand your answer correctly, you are saying that if the Government were to introduce this, it would probably make lives easier for care home providers, because then there would not be the pressure on them?

Zac Taylor: Yes. I do not think it is for the care home provider to decide whether that should be done. Our job is to encourage, to persuade, to give good advice, and to respect our colleagues' differences. There are some colleagues who genuinely cannot have it. Would complete non-compliance inhibit people from working? There is an impact there for people, but that is a decision for the Government to make.

Dean Russell: What you are saying, if I understand correctly, is that you would not want the care homes to have all the pressure of deciding about it. You would prefer it to be at government level, but generally speaking it would be better to have a wider push towards vaccinations.

Zac Taylor: Yes, and across our organisation the take-up has been very good.

Dean Russell: Thank you very much. Jenny, may I ask you the same question?

Jenny Morrison: My feelings echo those of Zac and Martin. In my experience, certainly in Mum's care home, we have seen a huge take-up of carers having the vaccine, and I agree that care providers have been doing a really good job in trying to encourage and persuade carers to have the vaccine. I also feel that more could be done to overcome fears and, as Zac said, to bust some of the myths that unfortunately are on social media and that people are picking up. A lot more could be done to educate and to grow confidence. People have genuine fears that may not have been answered by the Government, and more could be done about that.

I personally, and we as an organisation, feel that it is for the Government to make those decisions. People have individual choices and individual rights, which also have to be respected. As Zac said, there are some people who for medical reasons cannot have the vaccine or who are reluctant to have it. That is an issue that would need to be looked at.

Dean Russell: Thank you, I appreciate your full answers.

Chair: We go to Lord Dubs for our final question, which is a very big question indeed. Could you respond to his very big question with concise answers?

Q57 **Lord Dubs:** Looking beyond the pandemic and the current visiting restrictions that we have been talking about, do you think there are any wider human rights concerns for residents of care homes?

Professor Martin Green: There are lots of issues related to human rights issues. What I would like to see, and they have it in Scotland, is a human-rights based approach to all care. There is also the issue of the equalities agenda and particularly the way in which older people are very disadvantaged in the way in which services are commissioned. For example, other groups of people get personalised assessments for access to services, but that does not happen for older people's services, for which local authorities do block contracting.

This pandemic should spark a debate, and it is also why I want to see a commissioner for older people, because I want to look at the equality issues as well as the human rights issues. Everybody should be entitled to have their human rights protected, and it should be the cornerstone of every service. Sadly, we are not at that point at the moment.

Jenny Morrison: I agree with Martin. In addition, at the moment, care is often based on the ability to pay, on affordability. Obviously if you can afford a much more salubrious care home for your loved one, you are more likely to receive a higher level of care. There is a lot of inequality in the provision and how people receive care. Unless the system is overhauled and people receive equality in how that is delivered, it is a concern for all of us, as the population is not getting any younger. Certainly I am not. It is one of the things that concerns me for the future.

Zac Taylor: Yes, sadly, there are other rights issues that we need to consider coming out of Covid. We talked a lot here about the right to life. Safety has been paramount in the conversations we have been having. Recognition of people's vulnerabilities has been driving a lot of our behaviour as a society during Covid.

Coming out of the other end of Covid, we need to be mindful of a move back to people having a right to be part of their community, a right to participate and to be involved, because there is a risk that some people will have become marginalised by the past year or so. It is important that we get people back into the community and build their part and their presence. I work primarily with people of working age, and that is something that we need to focus on.

Chair: Thank you very much. You have all given very illuminating and helpful evidence to us, which we will use as we prepare our report on these issues. We can all recognise the huge importance of the work that goes on in social care. It has had a light shone on it in this pandemic, and we must draw lessons from it as well as do the very best we can during the continuation of the pandemic. Thank you very much indeed for your evidence, and I thank the committee members for their participation.