



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 21 April 2021

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

Questions 58-64

Witnesses

[I](#): Peter Wyman CBE DL, Chair, Care Quality Commission; Kate Terroni, Chief Inspector of Adult Social Care, Care Quality Commission.

Examination of Witnesses

Peter Wyman and Kate Terroni.

Q58 Chair: Good afternoon and welcome to this session of the Joint Committee on Human Rights. We are Parliament's committee that looks at the issue of human rights. Half of our members are from the House of Lords and half are Members of the House of Commons.

The human rights issue that we are looking at this afternoon is something that we have looked at a number of times before and we are very concerned about. It is the right to family life, which is one of the fundamental human rights. We are looking at it in the context of people who are residents in care homes who have not been able to have visits from family members during the Covid pandemic. We have already looked at this in some detail and we want to update in this afternoon's session. What is the situation about people being able to visit their loved ones in care homes? Bear in mind that we know how important it is, not just to the family member who is visiting, but to the relative who is being visited, that they do not deteriorate, and they know they are still a loved and valued part of the family.

We are very grateful indeed that our first panel is made up of two witnesses from the Care Quality Commission. We have Peter Wyman, who is the chair of the Care Quality Commission. Thank you very much indeed, Peter, for joining us. We also have your colleague Kate Terroni, who is chief inspector of adult social care at the Care Quality Commission.

Your role at the CQC is to monitor, inspect, and regulate social care services. What are you doing about monitoring, inspecting, and regulating the right to family life in respect of family visits during this Covid pandemic in social care services? We all understand, and it goes without saying, that there is a responsibility to protect the right to life. Nobody wants there to be risks of spreading the pandemic, but everybody recognises that there is a framework within which it is possible to visit. How are you monitoring, inspecting and regulating social care services in relation to visiting and making sure that they are all doing what they should be doing to respect the right to family life?

Peter Wyman: Thank you for the invitation. I agree with you, Chair. This is absolutely fundamental and incredibly important to both the people who have made their homes in care homes and their families. Let me give a very quick overview and then Kate may want to add some detail.

Right the way through from the very onset of the pandemic, we adjusted our approach. We had far more frequent monitoring calls over telephone, Zoom, Teams, or whatever, with care home providers to make sure that they understood the government guidance, which obviously evolved over time. We made sure they were looking after residents' needs.

As you said a minute ago, Chair, we made sure they were keeping them safe, but also from the very onset making sure that at least end-of-life visits were possible. As things have developed, wherever it has been at all possible to do so safely, we have made it possible for relatives and friends to visit their loved ones in care homes. It has been ongoing right the way through the last year for us. We have really been stepping up our efforts with regard to visiting as it has become more and more possible for that to happen.

That is a very big overview. Perhaps I could ask Kate to give you a little more detail of the precise numbers of monitoring visits and the sort of thing that we have done.

Kate Terroni: Thank you, Peter. Since the start of the pandemic, we have had about 18,500 monitoring conversations with social care providers for a number of purposes: to provide support, and to be assured that they understand the latest guidance, and they are utilising it; and to enable social care providers potentially to escalate issues back to government or locally to be resolved, particularly in the early part of the pandemic, for things like access to personal protective equipment, sickness, et cetera.

In addition, we have been working over the last year on the Because We All Care campaign, a joint campaign with Healthwatch England to encourage anyone who uses social care, their families, or people who work in the sector to give us feedback about what it has felt like to receive social care through the pandemic. We have said to people, "We want to know about your experiences, be they good, bad or mixed". We have been delighted with the excellent amount of feedback we have had from the public and information from people who use services and their families. That feedback absolutely informs our day-to-day view of quality and [*Inaudible.*]

We get this information on a daily basis, and 54% of our physical inspections at the firm have been triggered by information that the public has given us about the quality of care being delivered out there. We have enhanced our efforts to hear directly from people who use services and their families about how it is going and the quality of care, which spans a variety of things. We have heard a lot about infection prevention and control through to issues such as

visiting. That informs why we take regulatory action out there with our social care providers.

Q59 **Chair:** Peter, are you satisfied with how the CQC has defended the rights of residents in care homes and their families to visits? We have heard a lot of process. We hear quite a lot from witnesses in front of this committee about the process about input, but nobody is left any the wiser about the actual situation. We are really trying to find out what is going on on the ground, not what ought to be going on. What is going on?

Peter Wyman: The answer to your question is yes, I am satisfied. The output has been that we have been taking every step to make sure that there are visiting rights that are compatible with keeping residents safe. What is possible has evolved over time. It continues to vary from place to place depending on the facilities they have and the state of the virus.

Kate was saying that we get feedback, both directly from the homes and from the relatives and friends of people in the homes, on what they are experiencing. When they tell us, as some have, that they have not been able to get the visiting rights that they think they should have, we have taken steps to investigate. Sometimes there is an unrealistic expectation of what visiting is possible. On other occasions, there has not been sufficient visiting compatible with what we think is safe. Where that has happened, we have made sure that the home has changed so that there has been appropriate visiting.

It is also worth saying that we have quite often found that the communication between homes and relatives has not been as clear and helpful as it could be. Sometimes there has been more visiting available than people have thought was the case. That has been a matter of getting the communication sorted out. I can honestly say that we have been taking action to make sure that, so far as is possible, visiting can take place, but obviously there are restrictions for reasons we all understand.

Q60 **Dean Russell:** I will wrap my questions all into one, because I know that many of my colleagues would like to come in. Forgive the length of the question, but please do answer all the parts of it.

My questions relate to the role of monitoring and compliance. We as a committee are incredibly keen to understand whether care homes are implementing government guidance on visiting care homes. We have had many witnesses and read many reports. We wrote to the CQC expecting that you would be able to tell us, but you said as the CQC that you did not collect this information.

First, why do you not monitor adherence with visiting guidelines? If you do, can you please clarify that? Last week, the chief executive of Care England told us that the fact that you were not able to supply this information suggested a more fundamental problem with data collection within the CQC. I would like to know whether you agree with that. Thirdly, I would like to get a really clear idea from you whether you see the visiting guidance as advice or as guidance that must be followed.

Peter Wyman: Thank you, Mr Russell. I apologise if my letter to the Chair was not sufficiently clear and caused some misunderstanding. We absolutely collect data all the time. Our data starts with our understanding of a home when it first registers with us. That data is constantly updated by information that we collect, information that comes in from members of the public and so on. It is a very live set of data, which is why we were not able to say, "At a particular moment in time, we can tell you precisely how many homes have what visiting rights". It constantly changes.

Chair: Forgive me, but you could have then said, "This is a snapshot". There was nothing unclear about your letter. You said that you could not give us the information. We hear, as Dean said, that loads of people cannot get the visits which the guidance says they should have. We wanted to get a sense from you as the regulator, the monitor, and the inspector, what percentage of care homes are complying with the guidance at any one time. You could not give us that information.

Peter Wyman: As I said, I am sorry if my letter was not clear. I can tell you that, at this moment, we are not aware of any home that is not providing appropriate visiting rights. As I said a minute ago, where we have been contacted by relatives who have said they do not have the visiting rights, we have pursued that. We have satisfied ourselves that either the visiting rights had always been there and there had been a communication failure, or the home has changed and the visiting rights are now there.

I can absolutely say that, as of today, as of this moment, we are not aware of any home that is not making appropriate visiting rights in accordance with government guidance. To your point, Mr Russell, we regard the government advice as something we expect homes to follow. Kate was very clear right at the start, and has been clear in communication to care home providers over the past 12 months, that we expect government guidance to be adhered to.

Dean Russell: Sorry to interrupt, but can I just ask a very specific question? On the data collection, you mentioned that you were tracking how many homes, and you can assure us at the moment

that no homes are stopping visitations and so on. Do you have a dataset that says, over the past 12 months, how many visits have happened across each home? If not, how can you be assured that the volume of visits has been accurate compared to the number that should have been able to visit?

Peter Wyman: We certainly do not have that particular data.

Dean Russell: In that case, have you been able to monitor over the past 12 months whether that has been implemented? Forgive me, but I do not quite understand how you can be assured of any figures if you do not have the figures, and how you be assured that things have been followed if you do not know what has been followed or not.

Peter Wyman: We regulate well over 20,000 care homes and 25,000 adult social services. We are constantly monitoring those providers. We are getting information from the providers, the relatives and what our inspectors are seeing. We have carried out inspections and monitoring calls during this period.

Q61 **Dean Russell:** Sorry to interrupt again, but is that qualitative data or quantitative data? Can you say as a snapshot at any point in time that X thousand people have had visits at a certain care home? Is it more a qualitative thing that they have been able to have visits, and it would therefore be up to the family to then say that that has not been the case?

Peter Wyman: Thank you. You have put that very well. We are very interested in qualitative data that we can verify. This is not just asking for data from the homes that may or may not give you a complete picture. We are very much taking a qualitative view of whether what the home is providing at any point in time is appropriate to the circumstances of that home at that moment. This is constantly changing.

Dean Russell: No, I understand that, I really do. The bit I do not understand is that there would surely be a register of visitations in each home that would have a numerical value to it, whether it was 10 visits or 1,000 visits. Given the number of homes that you oversee, surely there must be a way for you to be able to track how many visitations have happened. That should be recorded somewhere so that, when you are reviewing that, you can see that there has been a massive drop-off in certain care homes or a trend. Surely, if it is based only on qualitative data, you are only then getting a snapshot at the point that you are doing the review, not a regular flow of data to see where the patterns of flow are happening, if that makes sense.

Peter Wyman: Yes, it makes sense, but what I was trying to say in my letter to the Chair, and what I obviously have not expressed very well, is that we have not collected that data, formed a register and added it up on a daily basis across all those homes that we regulate. We are much more interested in being sure that there are appropriate visitation rights—“appropriate” is obviously the key word—at a point in time. When we do an inspection, we will obviously look at wider data. If we are following up and we are concerned that there may not have been appropriate visiting because a resident’s family may have told us that, we can absolutely seek the data that you have suggested.

Dean Russell: Thank you. I should go to Kate, if I may. I am conscious of time. Kate, I will ask the same questions to you. Can you shed any light on whether there is a process to gather that data across all those care homes? It just feels to me that the idea of live data means that you have a regular track of analytics. It sounds to me like you have more of a snapshot of instances in which you have inquired, or a family has raised a concern. If an inquiry next week said, “How many care home visits took place over the past year?” would that be available? How long it would take to do?

Kate Terroni: We do not have that as we speak. Our focus is whether people are getting high-quality, person-centred care, and we have a number of ways of establishing that. We put out our messaging and have kept putting out messaging over the last year to say that we expect providers to follow government guidelines and listen to local advice. We want to see person-centred care plans to make visiting happen. We have been really clear in our expectation of providers.

We meet weekly with local authorities and clinical commissioning groups to find out what they are hearing on the ground when it comes to visiting. We have also met regularly with large care home providers to establish what are they doing at a corporate level to make visiting happen. They might share with us their visiting policies. We would also ask them for what they are doing to assure themselves that, maybe across their 100 care homes, they are all taking a person-centred approach to make visiting happen. In addition to that, we send out our inspectors to corroborate that information. It is not a day-to-day “On Monday, how many care homes are making visiting happen?” because it is so complex. If an outbreak in a home happened on a Monday, they would take certain action.

We have had examples in the last couple of weeks of concerns about blanket approaches to visiting. We have intervened and met with the registered manager or the regional manager. As a result of that, families have been able to see loved ones, and that organisation has changed its approach. I have letters in front of me.

Dean Russell: Sorry to interrupt you again. The bit I really do not understand, and I appreciate that the horse has bolted in some ways in this aspect, is that I could look at a dashboard now and get a sense of how many vaccinations have happened over the past week and how many hospital beds are full. Lots of different data on hospitals, for example, is stored and has to be verified. I just would have assumed that the CQC would have a similar thing for care homes, because it cannot be that hard to set up a registration system to just track numbers of visitations. Surely, you would then have been able to see patterns of behaviour. If there had been a lot of visitations, perhaps that might have caused an outbreak, or perhaps not. It just feels like you have to work a little bit blind. Am I totally misunderstanding the data you have?

Peter Wyman: Sorry. Kate may want to come in, but we are certainly not working blind. It is quite the opposite. We are working constantly with the sector to understand what it is doing on a day-to-day basis. You are right, Mr Russell, that we have not thought it a good use of our resource to compile the sort of register that you are suggesting. I understand where you are coming from, obviously, but it is just not the approach that we have adopted, so we cannot supply that data in that format.

I am very confident, as I said earlier, that we have good visibility of what care homes are doing on a day-to-day basis. If the visitation rights are not appropriate, we are taking the action to get that changed. We are doing what you as a committee would want us to do in the sense of making sure that people can visit their loved ones safely as appropriate. We are just not perhaps doing it in the way that you had envisaged.

Chair: In our letter, we asked how many care homes were fully complying with the new guidance and how many were not allowing visits. This is separate from Dean's very important point about measuring visits visit by visit. We also asked for your view on how many care homes were fully complying with the new guidance and how many were not allowing visits. You said, "This is not data we collect". It is a bit like Ofsted saying, "We talk to schools and we encourage them to do better," but not having any sense of the overview of how many failing schools there are. It is difficult to

reconcile what you have said with what we heard last week from Rights for Residents, which has been awash with anecdotal evidence of visits not being allowed and the guidelines not being respected. Perhaps we can move on to Lord Brabazon's question about the interpretation of the rules.

Q62 Lord Brabazon of Tara: You said there was no longer widespread use of blanket bans. Would you agree that, even where visiting may be technically permitted, this could still be contrary to residents' right to a family life? For example, last week we heard that some care homes have restricted visiting from nominated visitors to just 30 minutes outdoors once a week. Would you consider this to be an acceptable interpretation of the rules? We know other care homes that are acquiring prison-like visits with residents behind screens and forced to speak through phones. Are these sorts of things acceptable, in your view, particularly for the most vulnerable residents?

Peter Wyman: Let me start. Kate may want to add to this. In anything other than the middle of a pandemic, those sorts of restrictions would be completely unacceptable. We would normally expect people to be able to visit as often as they wanted and for as long as they wanted. The only restriction would be the smooth running of the homes. We would not expect people to visit in the middle of the night, but other than that we would expect people to visit more or less as they would if they were visiting somebody in a private residence. Those sorts of restrictions would not normally be regarded as acceptable.

In the middle of this pandemic, it is necessary to put restrictions in place. That is what I was trying to say earlier. Some homes have better facilities, have got further with vaccinations or are in the middle of a new variant outbreak. There is a constant movement of what is possible, and it will vary from home to home. I would accept reluctantly that the sorts of restrictions that you are talking about may be necessary in certain places during this pandemic. I certainly would not have said that that was acceptable in any normal period.

Kate Terroni: If I may just add, we have heard loud and clear from care home residents and families that visiting is happening, but it feels very different. It is booking a timeslot, it is for 30 minutes, or it is in a different part of the home to where families are used to visiting. We absolutely hear that this is in no way ideal for care home residents or families.

I just want to acknowledge the really difficult job that registered managers have, and have continued to have over the last year, of

weighing up keeping residents safe and supporting them to have access to see their loved ones as well. Visiting is happening, but it feels incredibly different for people. We are all as keen as each other, as soon as it is safe to do so, that those restrictions in place are eased so it goes back more to how it used to be.

Q63 Chair: You might have already answered this, but do you regard the guidance that says there should be a risk assessment in every individual case and no blanket policies as something that needs to be complied with to the letter or capital-G guidance? This is a regulated sector after all, and this is guidance from the Department of Health. Do you regard it as advice that care homes can either accept or reject as they feel fit? Care England told us its view is that it is just guidance, it is not any sort of legal requirement and it is just a framework. Where do you sit on this? In my day, I always thought guidance was complied with when it came from the top and the regulated sector. What is your view? Is it capital-G? Is it just advice, a framework and some thoughts?

Peter Wyman: No. We agree with you completely on this, Chair. Kate has made it clear to care home providers right the way through the pandemic that we expect guidance from the Government to be complied with.

Chair: What are you going to do about Care England, which seems to take a different view? It represents the sector and the providers. It does not seem to take the same view as you that this is guidance that has to be followed. It just thinks it is a framework.

Peter Wyman: We are regulating the providers, not Care England. We are really clear, Kate, are we not?

Kate Terroni: Yes.

Peter Wyman: You have been clear from beginning to end on this.

Chair: Are you worried that you are clear, but they are not?

Peter Wyman: Yes.

Chair: What use is it if you are clear and they are not? What are you going to do about it?

Peter Wyman: The homes are clear. I do not know what has been said to you, but the homes that we have dealt with could not be other than clear from the communications they have had from Kate and our inspectors, who are in regular contact with the homes. There is no reasonable reason for people to regard the guidance as just something that they can follow or not as they wish.

Q64 Baroness Massey of Darwen: I want to focus for a minute or two on the residents' families, who are very important and are sometimes a bit befuddled by the whole system and situation. Last week, a representative of residents' families said that it was very difficult to make complaints to the CQC. Many residents seem to be terrified that, even when it is technically possible to make an anonymous complaint, they will be identified by providers and kicked out of their homes. Do you recognise these concerns?

Peter Wyman: Yes, very much. I really understand why the families feel this way. Very often, the homes are quite small. They probably have raised their concerns already with the manager or the staff. I understand why they worry that, even if they have anonymously given this information, when we turn up asking questions the home will assume that they have been in touch with us. I understand the concern.

Let me give you some assurances, though. First of all, we will act on every piece of information that is given to us. We far prefer people to tell us who they are so we can go back to them, ask for further information, and also go back to them to tell them what we have done. If they tell us they want to be anonymous, then that is fine with us. We also give you and them an assurance that we do not disclose to the home that we have had information from Mr X or Mrs Y. That is not what we do, but I understand why families worry about it.

I would also make the point that we and others do not accept that people should not be able to complain. It is perfectly reasonable for somebody to raise concern about the care that their loved one and a member of their family is getting. They should not face eviction for raising concerns, so we would be worried about that as well.

Baroness Massey of Darwen: What guidance is given to staff in care homes to deal with these very vulnerable people and their families? They are very concerned, anxious, and sad about the whole situation. What guidance, training, or both are they given to deal with people who are complaining in a sympathetic way and answer their complaints? Does a better complaints system need to be in place to protect whistleblowing residents?

Kate Terroni: How a provider responds to feedback from people who use services and their families is a big indicator of the quality of that provider. The best social care providers are ones that welcome and invite feedback of all sorts. When we go out and inspect, we look at a provider's approach to feedback. Do they have family forums? Do they have regular mechanisms for showing how they are learning from that feedback?

Baroness Massey of Darwen: What do you do about people who do not have this?

Kate Terroni: We rate them accordingly. A key component of a good or outstanding provider is the ability to respond well and take on board feedback. The way it runs a service should be informed by the people who use it.

Baroness Massey of Darwen: Do you talk to residents as well?

Kate Terroni: We absolutely talk to residents. That is a key part of the way we regulate services. We spend time with residents and families. We also have our Experts by Experience programme in which a large number of people who use services themselves and family members go out on inspections with our inspectors. Sometimes an older person might feel more comfortable talking to another older person whose loved one is also in a care home. We do everything we can to put the voices of people who use services at the heart of how we form a view of the quality of that care.

Chair: Thank you very much for giving us your evidence today. Before we draw up our final report on this, we may come back to you again to see whether there is some data, even if it is just snapshot data, that you could give us so we could marry up what we are hearing from those who are concerned about the guidance not being implemented and your view that it is. Thank you very much indeed for your evidence today.