

Rt Hon Harriet Harman QC MP
Chair of the Joint Committee on Human Rights
By email: JCHR@parliament.uk

18 May 2021

Dear Harriet,

In response to the Joint Committee's report *Care homes: Visiting restrictions during the covid-19 pandemic*, I am writing to offer clarity to points raised within it and share detail on our approach to monitoring and inspecting care homes and the human rights of care home residents.

Our role in protecting the human rights of care home residents

We understand that being able to see loved ones is incredibly important to wellbeing. The pandemic has made this challenging, but for some people in care settings this has meant being separated and deprived of physical contact with loved ones for over a year. In addition to that, we know that safe visiting during the COVID-19 pandemic feels different to residents, relatives and loved ones. Providers might need to ask people to visit at a set time, and visits might have to take place in certain unfamiliar settings. In some circumstances, in order to keep residents, families, carers and staff safe, visiting has not met with expectations, and where there is reduced capacity in residents to understand the terms of the government guidance, this has led to understandable distress.

We know that there is a need to balance safety, through good infection prevention and control (IPC), with the human rights of individuals to see their loved ones - affording people their rights, including the right to life and the right to family life. That is why person centred, high quality care has never been more important and recognising that part of people's identity and wellbeing comes from their relationships is critical. Meeting people's holistic needs requires an individualised approach.

As restrictions on care homes continue to be relaxed, we will continue to monitor the situation and support care homes to implement the new guidance. We have continued to investigate concerns we hear about potential blanket bans. We know the majority of providers are making every effort to follow the latest guidance and we have made clear to them that if something changes and they are no longer able to do this then they should speak with their CQC inspector as soon as possible.

We have always been clear in our engagement with care providers - at every level of communication and at every stage of the pandemic - that the individual must be at the centre of the decision and all decisions need to stay under review as circumstances change. Every concern we have heard related to a potential blanket ban to visiting has led to action from our inspectors. This includes following up with providers, inspecting, raising safeguarding alerts where appropriate and engaging with local authorities.

During the COVID-19 pandemic, we identified that there was an even greater likelihood that inherent risk factors of a closed culture would be present in more services, as all services become closed environments due to a lack of external oversight and the potential knock on effects of staffing and management during this pandemic. We have highlighted to care homes that changes to people's usual care and treatment arrangements may amount to deprivation of liberty, and have signposted our inspectors to the relevant decision-making guidance documents.

Monitoring care home visits

Our regulatory role and core purpose to keep people safe and ensure that they have high quality, person centred care. We monitor, inspect and regulate services to make sure they meet fundamental standards of quality and safety. These fundamental standards are grounded in human rights principles.¹ We assess care home visitation policies against these standards on a case-by-case basis and our assessment will include local factors too e.g. vaccination rates, number of positive cases, IPC findings.

In our regular communications with care home providers we have promoted the capacity tracker and reinforced the benefits of completing it, in order to demonstrate an additional layer of transparency on current concerns, including visiting. We have reinforced this message in our most recent bulletin to care homes.

We have raised concerns about the integrity of the data derived from the questions on visiting in the capacity tracker. We are reviewing these questions and working with the Department of Health and Social Care and NHS England, to ensure they elicit valid, reliable and quality data.

We have concerns that 'live data on levels of visiting in every care home' would not give assurance on person centred care. We believe that attempts to produce live data on visiting would be obstructed by weak data integrity, huge resource implications and would have a substantial impact on a provider's resources, taking away from their ability to provide high quality frontline services. The data gathered would have significant inconsistencies and as a result would not offer a valid or reliable reflection of how care homes are offering visiting, nor on the quality of the visiting experience.

We believe that a better way of supporting all care homes to deliver person centred care is through supporting our experienced inspectors in their work to understand whether a care home is performing individual assessments for the benefit of each resident. Our inspectors, our analysts and our colleagues that receive concerns raised by members of the public have been working throughout the pandemic to identify risks and hear details of concerns, including those related to the human rights of care home residents. They are focused on gathering insightful information and developing a complete picture of how a care home is operating in order to support services to make changes that protect the human rights of care home residents and allow them to live their best lives.

We have sought assurances from care home providers about how they are supporting visiting to happen and we are verifying this information when we go out and inspect. We have a mandatory question on each of our care home inspections which looks at how visiting is being supported to happen in a safe way. Since the introduction of the government guidance on visiting, on 08 March 2021, we have undertaken 941 inspections. We have now completed analysis on the 941 inspections completed since the introduction of the government guidance on visiting, on 08 March 2021. We have identified 95% were enabling visiting to happen and that action was required in the case of the remaining 5% of providers to support them to introduce visiting in-line with the government guidance.

Concerns have been raised with us about 37 potential blanket bans and we have taken action in every case. We are grateful to those individuals who have shared information with us about potential blanket bans. We have used the information thoughtfully to investigate the circumstances. This includes following up with providers, inspecting, raising safeguarding alerts where appropriate and engaging with local authorities. We expect providers to follow government guidance on visiting where people are entitled to have designated visitors, and where we are made aware that this is not happening we will follow up with the provider and inspect if we consider that there is risk.

We are updating our guidance for our inspectors to support them in their questioning of providers, regarding how they facilitate visits. This guidance focuses on obtaining assurance that the government guidance is being implemented comprehensively. It prompts inspectors to ask specific

¹ <https://www.cqc.org.uk/what-we-do/how-we-do-our-job/fundamental-standards>

questions about how visits are facilitated on the individual level; following outbreaks, and during the provision of end of life care. The guidance will also support inspectors to ask questions about how visiting affects a care home's insurance status, particularly with regards restarting visits following an outbreak. It will also prompt inspectors to gather information from residents, relatives and loved ones about their experience of how visits are being facilitated.

Assurance regarding provider compliance

Since the publication of new government guidance, we have been proactive in seeking assurances about whether the guidance is reflected in the experiences of residents and families. When our inspectors investigate a concern related to visiting they ask questions of other agencies and families and people that use the service, and they gather evidence to better understand the concern that has been raised.

We have been working with relative representation groups, Rights for Relatives and the Relatives and Residents' Association, for many months in order to hear their concerns related to care home visiting. Whether these concerns relate to one care home in particular or a network of care homes operated by a corporate provider, the details are shared with the inspector and are followed up.

Our inspectors regularly engage with residents, relatives, loved ones and carers as part of their inspections and investigations of concerns. In October 2020, we introduced our new approach to monitoring services during the pandemic.² As part of this we have been working with our Experts by Experience to talk to residents, their loved ones and friends, to enhance the evidence gathering performed by inspectors and through our Give Feedback on Care form. Experts by Experience are people with lived experience of care services or of caring for someone with lived experience.

We are exploring how Experts by Experience can support our monitoring of services more generally, in addition to our inspections. In the coming months this work will give us the opportunity to follow up on and understand concerns related to restricted or reduced visiting. It will also help with the development of best practice for communications on visiting for care homes, as well as how to communicate the return of visiting following an outbreak. It will also prompt inspections, where the Expert by Experience has identified concerns.

Assurances from corporate providers

The Committee heard that some care homes have been issuing 'general policy' related to visiting. Where we have identified this is the case in a care home that is part of a corporate provider, we have sought assurances that individual assessments on the safety of visiting are taking place for each resident, in each care home in the network, and we have conducted our own investigations to identify whether this is the case.

During the pandemic we secured meetings with the corporate providers of care homes. In these meetings we have stressed the importance of ensuring visits are facilitated for people. We emphasised that enabling visits ensures person centred care is promoted and people's human rights are upheld. We advised corporate providers that if we had concerns that visits were not being facilitated, we would discuss this with them and would always take any regulatory action if people were being unduly denied visits with their loved ones.

Our Corporate Providers Team have been in immediate and direct contact with the executive team of corporate providers of care homes on hearing concerns related to locations in their organisation. We have asked these organisations how they assure themselves that each location is following the government guidance and advised them that continuous review is necessary to meet compliance with the guidance. This position is then corroborated through on-site inspection activity.

Anonymity

² <https://www.cqc.org.uk/news/stories/joint-statement-cqcs-chief-inspectors-deputy-chief-inspector-lead-mental-health>

Through our engagement with organisations that represent people who use services we have heard how worried people who use services, and their loved ones are, that if they raise concerns, whether to the care home, or to CQC, they will face negative consequences. Throughout our monitoring and inspection activities all information that is shared with us by members of the public remains anonymous. Our inspectors are trained to plan and complete engagement and regulatory activities, including inspections, in such a way that their investigations of anonymous information do not reveal the source of that information.

A solution must be sought through collaboration between all parts of the social care system that seeks to offer reassurance to people using services and their loved ones that feedback, concerns and complaints are welcome.

For our part, we will continue to work with campaign groups and residents' and relatives' organisations and with providers to build understanding about the standards we expect and to promote the protections we offer under regulation for residents who raise concerns.

We will continue to engage with organisations that represent people to hear concerns about making anonymous complaints and to act on concerns from families that they or their loved ones where they believe their feedback is not welcome and that they are suffering adversely from raising concerns. Our forthcoming assessment framework will include additional scrutiny of how providers are encouraging and enabling people to feedback concerns and complaints to them and how they are acting on them to improve the service. This is a fundamental standard below which care should never fall.

We have been working with Healthwatch England to deliver an awareness raising campaign, 'Because we all care'³, to encourage people to share feedback on individual experiences of care with us. The aim of the campaign is to support individuals to raise concerns and to help services identify and address quality issues. It has a special focus on improving awareness and encouraging feedback from people from seldom heard groups

We have funded partnerships with Relatives and Residents Association, Disability Rights UK, Mind, Carers UK and Patients Association, which supports their work of raising concerns to us. We also engage regularly with a wide range of voluntary organisations, directly and in a group forum, which includes representatives from Age UK, Alzheimer's Society, Carers UK and Residents and Relatives Association. At these meetings we invite feedback and ask for concerns to be raised. The meetings are open, with the conversation led by the representative organisations.

We do not have the power, under the legislation given to us by Parliament, to compel care homes to inform us of any changes to their visiting status. Similarly under our legislation we do not have the power to require care homes to report their 'live data on levels of visiting', neither do we have the power to take action against those care homes that are not reporting their visiting data via the capacity tracker.

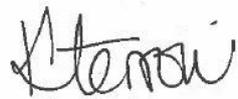
However, we have been clear in our statements to the sector and to the public that a service that is safe, responsive and well-led will treat every concern as an opportunity to improve, will encourage its staff to raise concerns without fear of reprisal, and will respond to complaints openly and honestly.⁴ Any negative behaviour or actions on the part of the care home provider following the raising of a concern by a resident is unacceptable. We will continue to highlight this to care homes and investigate all such concerns that are shared with us.

I hope that you have found this letter helpful to you.

³ <https://www.cqc.org.uk/news/releases/two-thirds-people-england-ready-help-improve-health-social-care-post-covid-19>

⁴ <https://www.cqc.org.uk/news/releases/two-thirds-people-england-ready-help-improve-health-social-care-post-covid-19>

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kate Terroni". The signature is written in a cursive, flowing style.

Kate Terroni
Chief Inspector of Adult Social Care