



House of Commons

House of Lords

Joint Committee on Human
Rights

**Care homes: Visiting
restrictions during the
covid-19 pandemic:
Government Response
to the Committee's
Fifteenth Report of
Session 2019–21**

**Second Special Report of Session
2021–22**

*Ordered by the House of Commons
to be printed 14 July 2021*

Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

Current membership

House of Commons

[Harriet Harman QC MP](#) (*Labour, Camberwell and Peckham*) (Chair)

[Joanna Cherry QC MP](#) (*Scottish National Party, Edinburgh South West*)

[Florence Eshalomi MP](#) (*Labour, Vauxhall*)

[Angela Richardson MP](#) (*Conservative, Guildford*)

[Dean Russell MP](#) (*Conservative, Watford*)

[David Simmonds MP](#) (*Conservative, Ruislip, Northwood and Pinner*)

House of Lords

[Lord Brabazon of Tara](#) (*Conservative*)

[Lord Dubs](#) (*Labour*)

[Lord Henley](#) (*Conservative*)

[Baroness Ludford](#) (*Liberal Democrat*)

[Baroness Massey of Darwen](#) (*Labour*)

[Lord Singh of Wimbledon](#) (*Crossbench*)

Powers

The Committee has the power to require the submission of written evidence and documents, to examine witnesses, to meet at any time (except when Parliament is prorogued or dissolved), to adjourn from place to place, to appoint specialist advisers, and to make Reports to both Houses. The Lords Committee has power to agree with the Commons in the appointment of a Chairman.

Publication

© Parliamentary Copyright House of Commons 2021. This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright-parliament.

Committee reports are published on the [Committee's website](#) by Order of the two Houses.

Committee staff

The current staff of the Committee are Laura Ayres (Committee Operations Office), Miguel Boo Fraga (Committee Operations Manager), Chloe Cockett (Senior Specialist), Busayo Esan (Inquiry Manager), Liam Evans (Committee Specialist), Alexander Gask (Deputy Counsel), Eleanor Hourigan (Counsel), Lucinda Maer (Commons Clerk), George Perry (Media Officer), Nicholas Taylor (Second Commons Clerk), and George Webber (Lords Clerk).

Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 2467; the Committee's email address is jchr@parliament.uk.

You can follow the Committee on Twitter using [@HumanRightsCtte](#)

Second Special Report

The Joint Committee on Human Rights published its Fifteenth Report of Session 2019–21, *Care homes: Visiting restrictions during the covid-19 pandemic* (HC 1375/HL Paper 278) on 5 May 2021. The Government response was received on 6 July 2021 and is appended below.

Appendix: Government Response

Introduction

1. This is the Government's formal response to the recommendations made by the Joint Committee on Human Rights in its report, 'Care Homes: Visiting restrictions during the COVID-19 pandemic' published 05 May 2021.
2. The Committee's report focuses on guidance to care homes in England on restricting visiting during the pandemic. The report raises concerns about the proportionality of measures set out in guidance and reiterates the Committee's call for legislation to require individualised risk assessments to be undertaken for each resident.
3. The Government welcomes the report. The Government continues to recognise the need for appropriate parliamentary scrutiny of the actions it has taken, seeking to respect Parliament and work within the legal frameworks presented to it. The Government values the role of Parliament and will continue to ensure there is opportunity to appropriately scrutinise the ongoing response to the pandemic.
4. The COVID-19 pandemic has had an unprecedented global impact that has severely affected public health, the economy and society. The Government is mindful that the spread of the virus has caused hardship for many people in the UK over a sustained period. This has been particularly difficult for those subject to additional restrictions, such as care home residents, who continue to be particularly vulnerable in the event of coronavirus infection. Balancing the right to family life with the need to protect the lives of all those who live and work in care homes, is challenging. However, the Government has always sought to deliver a proportionate response.
5. As the report points out, the central aim of the Government's response, throughout the pandemic, has been to protect lives. However, visiting arrangements have been available throughout the pandemic. This includes window visits and visits in exceptional circumstances, including at the end of life.
6. The restrictions that individuals are placed under in order to reduce the risks of transmission are also reviewed regularly to ensure they are proportionate and appropriate. The Department of Health and Social Care published visiting guidance on 22 July 2020, which outlined how providers, based on the views of their local Director of Public Health, could take a dynamic risk-based approach to allow visiting where safe. This guidance was updated on 15 October 2020 to reflect the tightened infection prevention and control measures required to enable visits to continue safely. We have further updated the guidance as community prevalence of Covid-19 has reduced and take-up of vaccines has increased.

7. We are mindful that we need to monitor the impact that the measures taken are having on people, remaining flexible so that we can adapt to new evidence and changes in risk. Where measures have been taken, the Government has sought to put them in place for as short a period as reasonably practicable. As the Government has eased restrictions for the rest of society, care home visiting rights have been reviewed and relaxed in a manner proportionate to the risks that care home residents face.

8. The following sections set out the Government's response to the recommendations made within the report. This response was produced by the Department of Health and Social Care (DHSC).

Government responses to the Committee

Restrictions on visiting care homes during the pandemic (Paragraph 24): JCHR conclusion: *Since the start of the pandemic, official guidance on care home visiting has prioritised the Government's obligation to protect residents' right to life (Article 2 ECHR), even where this has severely impacted on the right to respect for private and family life (Article 8 ECHR). While this may have been understandable in the short term, it is unacceptable to place draconian restrictions on the right to family life for those in residential care and their families for over a year. Of course the Government should seek to protect residents in care homes, but it also has an obligation to uphold their right to family life and ensure that it is facilitated in practice.*

1.1 The COVID-19 pandemic has posed unprecedented challenges to the social care sector. As a result, restrictions have been placed on visiting to prevent the spread of COVID-19 in care homes and to safeguard the lives of care home residents and staff.

1.2 The Government recognises that visiting restrictions are particularly challenging for people with dementia, learning disabilities and autism as well as for their families. Therefore, maintaining opportunities for visiting is critical to supporting residents' health and well-being and ensuring meaningful relationships with friends and families.

1.3 The Government notes its duty to protect and promote care home residents' rights to family life (Article 8 ECHR) and their right to liberty and security (Article 5 ECHR). However, in doing so, it also must balance these rights against other competing rights and freedoms, including the right to life (Article 2 ECHR). We have made judgements that balance these rights to enable residents to have meaningful visits with their families and loved ones while ensuring that residents are protected, as far as possible, from infection and harm from COVID-19.

1.4 Given the specific vulnerabilities of care home residents, care home visiting policy is more restrictive than before the pandemic. This is because older adults, disabled people, people with learning disabilities and autism are more likely to suffer serious illness or death from COVID-19 pandemic compared to the general population. Throughout the pandemic, the Government has published updated guidance on visiting to enable safe visiting in care home settings for residents and their loved ones, in a manner proportionate to the risk of transmission.

1.5 On 22 July 2020, the Government published the 'Update on Visiting Arrangements in Care Homes' guidance. Care providers were advised to develop a policy for limited visits

where community transmission rates were low. Guidance further stipulated that where there was an outbreak, care homes could impose visiting restrictions but were required to consider alternative options to maintain social contact for residents and their families.

1.6 In line with ongoing clinical and SAGE subgroup advice, there have been significant changes to visiting arrangements in care homes, over recent months, with a relaxation of restrictions at each step of the Government's Roadmap out of lockdown. Guidance changes allowed residents first to nominate one named visitor to visit indoors from 8 March 2021. As of 17 May 2021, each resident can nominate five visitors (by providing names to their care providers) for regular visits into care homes. The introduction of named visitors for each resident has provided greater opportunities for more regular and reliable visiting than has been available throughout the pandemic.

1.7 The current 'Visits out of Care Homes' guidance enables residents to participate in visits out of the care home without the need to isolate on return to the care home, subject to an individual risk assessment. However, self-isolation is still required following overnight stays in hospital and visits assessed to be high-risk, following an individual risk assessment. The individual risk assessment allows care home managers to consider, among other things, the vaccine status, the levels of infection in the community, and variants of concern in the community, to inform their decision making in a way that is proportionate and is based on clear and specific clinical advice.

1.8 The Government will keep under review all of its guidance for care homes during Covid-19 to ensure that it is appropriately balancing the current risk to care home residents of Covid-19 with their right to family life.

Adequacy of the guidance: family as essential care givers (Paragraph 28): JCHR conclusion: *Close family members who provide care can be their relatives' most important care givers. They provide the emotional and physical support that a paid carer could never hope to replicate. The Government's guidance over the last year has not adequately acknowledged the importance of families to residents' wellbeing. It was wrong to deny essential care givers the right to see their relatives, especially when they could have played a crucial role in supporting the over-stretched care home staff during the crisis. Care home providers say they understand the importance of families to residents' care and wellbeing; they must show this in practice.*

2.1 The Government recognises the importance of essential care givers in providing critical mental and emotional support to care home residents. This is the type of care and support that cannot be provided easily, or not in quite the same way, by even the most highly skilled and committed professional care home staff.

2.2 The Government accepts that the guidance was being interpreted by some care homes to mean that essential care givers were appropriate only for residents who had direct care needs that could not be met by care home staff. We are keen to ensure that essential care givers are available to support the emotional and physical wellbeing of all residents.

2.3 The current guidance on 'Admissions into Care Homes' and 'Care Home Visiting' has been amended so that all residents who want an essential care giver are able to nominate one. Essential care givers will adhere to the same testing and PPE arrangements as care home staff in order to provide extra support, like help with washing, dressing, mental well-being support or eating.

2.4 Visits from essential care givers, particularly for those at the end of their life, should always be supported. Therefore, wherever possible, essential care givers should be permitted to maintain contact during periods of self-isolation.

Adequacy of the guidance: consultation with key stakeholders (Paragraph 30): JCHR conclusion: *The Department for Health and Social Care has not consulted widely enough when preparing new guidance for the care home sector or provided sufficient notice to families and providers when announcing significant changes to visiting procedures. Greater involvement for residents groups in the preparation of guidance would ensure that strong advocates for the right to private and family life are heard when key decisions are made.*

3.1 The Government hugely values the contribution of care workers, who have provided around the clock care for care recipients, throughout the pandemic. Keeping people safe, throughout this period, especially care recipients, is the Government's top priority.

3.2 Since the start of this pandemic, the Department of Health and Social Care has been working closely with public health experts and partners in the social care system to put in place guidance and support for adult social care. This partnership has been vital in understanding the experiences of providers, residents and their relatives.

3.3 In formulating the most recent Visits Out Guidance, the Department of Health and Social Care engaged with and reflected input from stakeholder groups representing families and care users as well as NHS England & NHS Improvement, the National Care Association, Carers UK, Care England, National Care Forum, Care Quality Commission, Alzheimer's Society, Age UK, and others. The Social Care Sector COVID-19 Support Taskforce, which was chaired by Sir David Pearson and later went on to form the Social Care Stakeholder Group, was made up of members from across the sector including UNISON, ADASS, the LGA, and Healthwatch. Along with its eight sub advisory groups, provided valuable input into our COVID-19 Winter Plan and other policy decisions.

3.4 As the pandemic progresses, the Government will continue to work with stakeholders to review and update guidance to ensure it is a useful operational tool for users. While it is difficult to consult all those in the sector during the development of policy and guidance, the Department of Health and Social Care will endeavour to consult more widely on future iterations, including seeking more engagement with representatives of residents and their families.

3.5 The Department has also noted the sector's concern about not having sufficient notice of changes to guidance. In order to ensure that our changes to guidance are informed by the latest data and clinical advice it has sometimes been necessary to make decisions on changes to guidance quite close to the implementation date. We recognise the burden that this places on providers, however, and will endeavour to publish future iterations of the guidance further in advance of any changes than has sometimes been the case.

Restrictions on visiting out of care homes during the pandemic: 14-day self-isolation rule (Paragraphs 36, 37, 38 & 39): JCHR conclusion: *There are clear benefits to residents' health and wellbeing from being able to visit a park or sit outside at a hospitality venue. There are specific concerns about the impact of isolation on younger residents with learning disabilities from their valued roles in the community. However, Government*

guidance requiring residents to self-isolate for 14 days if they choose to leave their care home – for even the shortest period – is excessive and clearly designed to discourage such visits.

It is difficult to understand how this 14-day self-isolation rule can be proportionate interference with the rights of residents and their families to respect for private and family life under Article 8 ECHR. In many cases, it is likely to give rise to difficult questions of deprivation of liberty under Article 5 ECHR. It is not obvious how the resulting deprivation of liberty can be said, at present, to be necessary and proportionate for purposes of Article 6 ECHR.

Further, it is doubtful that self-isolation imposed on the basis of guidance would be ‘in accordance with the law’ and, therefore, were such self-isolation to be imposed, it does risk constituting an unlawful interference with residents’ right to liberty and right to family life.

It is right that the Government has committed to reviewing this guidance in May 2021. As the rest of us benefit from reduced lockdown restrictions, residents of care homes – the vast majority of whom have already been fully vaccinated against this virus – must not be left behind.

4.1 The Government agrees with the Committee’s view that care home residents must not be left behind and should, like the wider population, benefit from reduced lockdown restrictions.

4.2 As restrictions have eased, we have progressively enabled more visiting opportunities, in accordance with the latest clinical advice. The latest iteration of the visiting guidance advises that all visits out should be allowed without subsequent isolation, except where they involve an overnight stay in hospital or are deemed to be high risk, following a risk assessment by the care home. These changes have been welcomed by the sector and we are confident that they will support improvements in physical and mental wellbeing for residents, particularly younger residents with learning disabilities and/or autism.

4.3 Due to the specific clinical vulnerabilities in this cohort and the potential for longer incubation periods, PHE has recommended a 14-day isolation period where isolation is required. In December 2020, PHE recommended to the CMO and UK Senior Clinicians group that the 14-day isolation period should remain unchanged for care home residents based on current understanding of infection in older people and those with other vulnerabilities, which may impact their immune system.

4.4 This approach is guided by the Government’s positive obligation to ensure residents’ right to life (Article 2 ECHR). Any changes in restrictions that enable residents’ right to family life (Article 8 ECHR) are considered to be necessary and proportionate to the risks. As care home residents are particularly vulnerable in the event of infection with COVID-19 – the interference by way of continuing restrictions in this specific cohort is necessary and proportionate to the risks they face.

4.5 All care home residents are allowed to nominate an essential care giver, who is able to visit their loved one, in all circumstances, including during a 14-day isolation period, unless there are specific reasons not to do so (such as when the essential care giver has tested positive for COVID-19). As long as they are not symptomatic or have not tested

positive for COVID-19, all residents are able to leave their room to go outdoors (within the boundaries of the care home grounds) during their self-isolation period, subject to a risk assessment.

Residents and families: effect of restrictions (paragraphs 42 & 43): JCHR conclusion: *The Government and care home providers have had a difficult job balancing the right of residents to a family life with the need to protect the right to life of all residents and staff. However, many providers have erred too far on the side of caution, to the significant detriment of residents and their families. Both the Government and providers should have done more to recognize the importance of quality of life for care home residents.*

While care homes primarily support older people, it is important to remember that there are also thousands of young people in residential care settings, many of whom have learning disabilities and/or autism, who will have faced unique challenges over the last year.

5.1 The Government notes the concerns raised by the Committee. Throughout the pandemic, visiting guidance has been updated to reflect the evolving scientific understanding of COVID-19 and the latest clinical advice. Guidance has always emphasised that care homes should undertake risk assessments to enable safe visiting in a manner that is proportionate to the risks. The Government is clear that blanket bans on visiting are not appropriate.

5.2 The Government recognises the important role that family and friends play in ensuring residents' quality of life, and has recognised throughout the pandemic the balance to be struck between protecting residents from the risks of Covid and the importance of contact with loved ones. That is why successive updates to guidance have allowed more visiting as community infection rates have fallen, additional testing capacity has become available and with care home residents increasingly protected through vaccination. The role of essential care givers, who provide critical mental and emotional support to care home residents, is now included in national guidance on visiting arrangements in care homes. The Government accepts that the role was initially interpreted too narrowly; and has taken steps to amend the language in its guidance to ensure that all those who want the support of an essential care giver are able to nominate one.

5.3 All care homes should encourage residents that want to have an essential care giver, to nominate one. Care homes should undertake an individual risk assessment for the resident to facilitate care home visiting. Essential care givers are a central part of delivering the appropriate care and support to the resident, and as such play a role alongside professional members of the care home staff.

5.4 Recent guidance updates have encouraged providers to enable all care home residents, regardless of their age, to take advantage of more opportunities for visits out of the home without subsequent isolation. Such changes will have a positive impact on the lives of all care homes residents, including young people in residential care settings, who will have faced unique challenges over the last year.

Implementation of the guidance (paragraph 55): JCHR conclusion: *It is right and proper for the Government to be challenged on the content of its guidance, as we have done so before and do so again here. But the Government's guidance should not be second guessed or selectively applied by care home providers, absent of a cogent and clearly explained basis for doing so. If care homes are to depart from the guidance at*

any point, they must do so on the basis that it sets the floor, rather than the ceiling, in terms of supporting residents and their families to enjoy their Article 8 ECHR rights. It is also important that there is clarity as to whether national guidance should take priority over local guidance from a Director of Public Health.

6.1 While we expect all care homes to have regard to our guidance, as care home settings and populations differ significantly, care home managers are best placed to make decisions within their care homes.

6.2 The current guidance advises care home managers to undertake an individual risk assessment, to inform their decision-making in respect to care home visits. Decisions about an individual resident's visit out of a care home should be taken with the resident's assessed needs and circumstances considered. The care home should balance the benefits of visits out of a care home against a consideration of risks to others in the home, where necessary. We have also set out, in guidance, factors that care homes should take into account when completing risk assessments for visits out.

6.3 Local Directors of Public Health are leaders of the local public health system with statutory powers to issue additional local guidance as appropriate, and the Government is supportive of their role in managing local outbreaks. Local guidance issued by Directors of Public Health should be a key factor for care home managers when carrying out a risk assessment. Within our national guidance, we have signposted the circumstances where local guidance from Directors of Public Health is particularly relevant. This includes when the community in which the care home is situated sees high, or rapidly rising, levels of infection, where there is evidence of variants of concern, and where a care home suffers an outbreak.

Care Quality Commission: monitoring and complaints (Paragraph 61): JCHR conclusion: *It is clear that public authorities do not have a clear enough view of the care home sector's adherence to the guidance on visiting. It was astonishing to hear the Care Quality commission (CQC) claim that they were not aware of any care home in England that was not following the guidance, despite clear evidence to the contrary from residents and their families.*

Care Quality Commission: monitoring and complaints (Paragraph 61, 62 & 65): JCHR recommendation: *The CQC needs to get a grip on what is going on in the care home sector and put in place more robust processes to monitor adherence with the Government guidance by the end of May 2021.*

The CQC urgently needs to establish better processes for collecting data and monitoring the right of care home residents to receive visitors. It should collect data and publish live data on levels of visiting in every care home, the number of complaints that have been received and how these have been resolved. The CQC should immediately look at a sample of care homes to help assess the sector's compliance with the government's visiting guidance.

The Government and CQC must urgently work together to implement a new process for residents that guarantee anonymity and provides families with confidence that their relatives will not face retaliation for raising valid concerns.

7.1 The Government notes the views raised by the Committee and CQC's response to this recommendation.¹ The Government will work closely with the CQC to ensure that families are confident their relatives will not face retaliation for raising valid concerns.

7.2 CQC has made several statements (in bulletins and in communications to support trade associations) that blanket bans on visiting are unacceptable. Wherever possible, CQC reinforces the message that care homes need to enable, rather than restrict, visiting.

7.3 CQC has provided mechanisms for people to feedback concerns about visiting. CQC responds to all complaints passed to them and can receive complaints anonymously via representative groups, such as Rights for Residents. Where these complaints have named the provider or service being complained about, the CQC has followed up the cases.

7.4 During its site visits, CQC inspectors use questions in the [IPC tool methodology](#) to look at how well staff and people living in care homes are protected by infection prevention and control. The [IPC tool methodology](#) has been used since August 2020. There is also a mandatory question at the end of the tool which asks whether the service is following Government guidance on care home visiting (Is the service facilitating visits to people living at the home in accordance with current guidance?). Using this data, a range of actions have been taken – ranging from data correction, signposting towards good practice, improving communications, and escalation through existing routes where required.

Statutory Instrument: individualised risk assessments (Paragraph 70): *JCHR recommendation: In February of this year we called for legislation to require that individualised risk assessments are undertaken for each resident, and to ensure that procedures are in place so that such assessments can be queried where they have omitted relevant factors or not made adequate efforts to consider how covid-safe visits might be facilitated. Since then, it has become apparent that our fears were well-founded. We have prepared a draft statutory instrument to address these concerns; the Government must now lay it before Parliament.*

8.1 The Government notes the Committee's calls for visiting legislation to facilitate COVID-safe visits in care homes. In light of recent changes to the guidance and continued work to monitor the implementation of the changes, the Government does not believe that now is the right time to legislate, but the option of legislation will be kept under review.

8.2 The draft Regulations provided by the Committee propose an amendment to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which set out the standards with which all providers of CQC-regulated activities must comply; and in relation to which CQC can take enforcement action. These Regulations would amend Regulation 9 (the fundamental standard relating to person-centred care) to require providers, in meeting that fundamental standard, to facilitate face-to-face visits for residents, unless individual risk assessments indicated that this was not possible, in which case they must offer alternative visiting options. The Regulations provide that individual risk assessments must consider the risks to the health and wellbeing of both the service user in question, and other service users.

1 <https://committees.parliament.uk/publications/5977/documents/67715/default/>

8.3 The Committee's commentary on the proposed regulations is framed around the right to a family life (Article 8 ECHR). This is a qualified right and not an absolute right. Therefore, it must be balanced against the right for all residents and staff in the care home to have their health protected against the effects of COVID-19.

8.4 It is important to highlight that care home settings differ significantly, and the pandemic means the situation in care homes is constantly evolving. Therefore, visiting guidance has remained as flexible as possible so as to be proportionate to the very wide range of circumstances of individual care homes.

8.5 The current guidance now focuses on individual risk assessments to enable more visits out without self-isolation in comparison to earlier guidance in response to COVID-19. The guidance says that individual risk assessments should consider relevant factors to assist providers in determining how COVID-safe visits might be facilitated. If undertaking a visit out is not possible, because of the risk to the individual and other residents and staff, care providers should communicate the reasons for this decision clearly to the resident and their family.

8.6 The Care Quality Commission (CQC) already has regulatory powers that can be used where it has concerns regarding visiting. Wherever possible, CQC reinforces the message that care homes need to enable rather than restrict visiting.

8.7 Care providers have a statutory duty to residents in their care. Under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, care homes have a duty to ensure the safe care and treatment of service users. This includes assessing the risks to the health and safety of service users in a manner that is reasonably practicable to mitigate any such risks. Providers should pay due regard to their legal duties to residents under the Equality Act 2010 and the Human Rights Act 1998 as part of their overall risk assessments to ensure that residents have the health and wellbeing benefits from visiting.