



Joint Committee on Human Rights

Committee Office · House of Commons · London · SW1A 0AA

Tel 020 7219 4710 Email JCHR@parliament.uk Website www.parliament.uk



From Rt Hon Harriet Harman MP, Chair

Gillian Keegan MP

Minister of State for Care and Mental Health

29 October 2021

Dear Gillian,

Congratulations on your recent appointment as Minister of State for Care and Mental Health. The Committee looks forward to working with you, particularly in connection with our new inquiry into Protecting Human Rights in Care Settings.

Today, I am writing once more about the urgent situation regarding visiting restrictions in care homes, assessment and treatment units, and other mental health institutions.

As part of our new inquiry, we launched a survey to investigate potential human rights violations in care settings. The responses have shown that there is a widespread concern among relatives and patients that restrictions are still being applied indiscriminately, and that family members are being barred from seeing their loved ones, even when it appears that visits might be safely facilitated.

Although Government guidelines highlight the need for individualised risk assessments for all residents and patients, the guidance does not have statutory force. We have heard that many care providers are continuing to fail to carry out such assessments.

One respondent noted:

“There is no individual risk assessment for my mother, visits are not based on 'her needs'. I had to ask for Essential Care Giver (ECG) status, no attempt was made to share this information with families. When residents asked about the changes to visiting guidelines, they too were not told about ECG or any other changes.”

We have also heard worrying reports of overly restrictive measures placed on care residents. One person said:

“My mom has been locked away along with other residents from their loved ones due to covid cases every other week at the home. They had a 3rd lockdown (14 days or more each time) in less than 12 weeks. My mom has stopped talking to us and refusing to look at us through her bedroom window and she is declining rapidly. We feel so helpless when we can't comfort her and because of her dementia she thinks we have abandoned her. We watch her breaking her heart and all we can do is run around the other side of the home, ring the bell and ask a carer to help and comfort mom, then run back to mom's



From Rt Hon Harriet Harman MP, Chair

window and wait and cry with her. We only want to hold her hand and spend time with her while she is still with us.”

This unfortunate reality has also been shown by multiple media outlets, such as the Mail on Sunday, which published an article on 3 October 2021 showing that many care home residents have been isolated from their relatives and loved ones due to draconian restrictions.

As we have set out before, most recently in our report published in May this year on Care homes: Visiting restrictions during the covid-19 pandemic¹, blanket visiting bans are contrary to the rights of both patients and their families under the European Convention on Human Rights, the Code of Practice to the Mental Health Act 1983, and NHS England guidance. Not adopting an individualised approach for allowing meaningful visits risks breaching the right of patients, residents, and their families to family life (Article 8 ECHR), and could potentially raise deprivation of liberty concerns (Article 5 ECHR).

It is imperative that the Government reviews its guidance to ensure that care providers always put in place the minimum restrictions necessary to keep residents safe, while facilitating meaningful visits and respecting the rights of residents and patients. Further, the Government must act to ensure that guidelines are followed by care providers. Considering the survey responses we have received, it is clear this is still not happening. One individual said:

“I feel the government has failed people in care homes by only offering guidance and not mandating what needed to happen.”

Your predecessor said that she had “an open mind about how best to make sure appropriate levels of visiting are taking place”. In July 2021, the Government noted that there would be an effort to monitor the implementation of changes to guidance and that “*the option of legislation will be kept under review*”. Responses to our survey suggest that now more than ever is the time to introduce legislation ensuring compliance with the Government’s guidance.

Earlier this year, we prepared a statutory instrument (appended to this letter) that would require care home providers to undertake individualised risk assessments. As noted in our letter to the Secretary of State for Health and Social Care in February 2021, our proposal:

“would require that individualised risk assessments be undertaken to facilitate face-to-face contact, where possible, with family and friends whose support is significant to residents in a care home or hospital setting. Where the risks posed by face-to-face contact were too great, the legislation would require that

¹ [Care homes: Visiting restrictions during the covid-19 pandemic](#), Joint Committee on Human Rights, Fifteenth Report of Session 2019–21 (HC 1375; HL Paper 278).



Joint Committee on Human Rights
Committee Office · House of Commons · London · SW1A 0AA
Tel 020 7219 4710 Email JCHR@parliament.uk Website www.parliament.uk



From Rt Hon Harriet Harman MP, Chair

careful thought be given to alternatives to meet residents' needs, including their emotional and psychological needs.”²

We ask that you review the Government's guidelines to ensure that meaningful visits are facilitated by all care providers and that you reconsider our proposal and introduce legislation as a matter of urgency. I would be very grateful if you could respond to us by 19 November 2021.

Yours sincerely,

Rt Hon Harriet Harman MP
Chair of the Joint Committee on Human Rights

² As noted before, this draft legislation covers all service providers regulated by the CQC. However, due to the scope of the Health and Social Care Act 2008, it would not cover those individuals in supported living accommodation who do not receive “personal care” as those providers are not regulated by the CQC. We urge the Government to ensure that measures taken to facilitate visits for care home residents, hospital patients and those receiving personal care in supported living accommodation are also applicable to all those living in supported living settings.



From Rt Hon Harriet Harman MP, Chair

Annex: The JCHR's draft Statutory Instrument

Statutory Instruments

2021 No. xxxx

National Health Service, England

Social Care, England

Public Health, England

Made

[Date]

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 8, 20(1) to (5A), 35, 86(2) and (4), 87(1) and (2) and 161(3) and (4) of the Health and Social Care Act 2008³.

In accordance with section 20(8) of that Act, the Secretary of State has consulted such persons as the Secretary of State considers appropriate.

A draft of these Regulations was laid before Parliament in accordance with section 162(3) of the Health and Social Care Act 2008, and was approved by a resolution of each House of Parliament.

(1) **1.**—These Regulations may be cited as the Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2021.

(2) These Regulations come into force on the day after the day on which these Regulations are made.

(1) **2.**—Regulation 9 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 is amended as follows.

(2) After Regulation 9, paragraph (3), sub-paragraph (i), insert –

³ [2008 c. 14](#). Section 20 of the Health and Social Care Act 2008 (“the 2008 Act”) was amended by section 81 of the Care Act [2014 \(c. 23\)](#). Section 161(3) of the 2008 Act was amended by section 294(4) of the Health and Social Care [Act 2012 \(c. 7\)](#).



From Rt Hon Harriet Harman MP, Chair

(j) “facilitating face to face contact between the service user and persons significant to the service user so as to meet the service user’s needs and preferences, having particular regard to their emotional and psychological needs;

(k) where the registered person determines following an individualised risk assessment that unrestricted face to face contact between significant persons and the service user is not possible, facilitating face to face contact with the significant person or persons whom the registered person reasonably believes best meets the needs and preferences of the service user;

(l) where the registered person determines following an individualised risk assessment that no face to face contact between any significant persons and the service user is possible, facilitating contact with significant persons in such other ways as best meets the needs and preferences of the service user and is in accordance with the individualised risk assessment.”

(4) After Regulation 9, paragraph (6). insert –

(7) In this regulation –

“face to face contact” means contact without fixed physical barriers between the service user and the significant person, but includes contact where the service user and/or relevant person or persons are wearing appropriate personal protective equipment if such is required to prevent or control the spread of infections, including those that are health care associated.

“an individualised risk assessment” means a risk assessment which considers:

(a) The risks to the health and well-being of the service user both of having and not having face to face to contact with either two or more significant persons (for purposes of paragraph 3, sub-paragraph (k)) or one relevant person (for purposes of paragraph 3, sub-paragraph (l));

(b) The risks to the health and well-being of other service users arising from the registered person facilitating face to face contact between the service user and a person or persons significant to that service user; and

(c) The risks to the health and well-being of the service user (and to other service users) of alternative options for contact to minimise the risks identified in (a) and (b).



Joint Committee on Human Rights

Committee Office · House of Commons · London · SW1A 0AA
Tel 020 7219 4710 Email JCHR@parliament.uk Website www.parliament.uk



From Rt Hon Harriet Harman MP, Chair

“significant person” means any person falling within section 4(7) sub-paragraphs (a) to (d) of the 2005 Act (whether or not the service user lacks capacity for purposes of the 2005 Act to decide whether or not to have face to face contact with them) and “person significant to the service user” is to be read accordingly.

Signed by the authority of the Secretary of State for Health.

xxx

Minister of State,

Department of Health

[Date]