Visiting for care home residents

This is a summary of the key law and guidance relevant to visiting in care homes in England, covering:

- Government guidance on visiting in and out of care homes
- Laws relevant to visiting, setting out legal rights and standards

The government guidance should be read in the context of these legal standards and duties.

This document is not legal advice

1. Government guidance on visits in and out of care homes

The Government guidance on visiting in care homes has been withdrawn and replaced with guidance on infection prevention and control, available here (published on 31 March). The guidance covers a wide range of issues and contains a section on visiting arrangements in care homes.

Overall approach

The guidance says that “contact with relatives and friends is fundamental to care home residents’ health and wellbeing and visiting should be encouraged. There should not normally be any restrictions to visits into or out of the care home”. The guidance emphasises that the right to private and family life is protected by law (Article 8 of the Human Rights Act – more info on this in the next section). Even in the event of an outbreak, or where a resident has confirmed covid, every resident should continue to have access to one visitor.

End of life

End of life visits should “always be supported”. Testing is not required in any circumstances for visits at the end of life.

Visits out

The restrictions on visits out of a care home (including the need to isolate) have been dropped and residents will no longer have to test following a visit out.

Precautions

The guidance states care homes should ask all visitors to wear a face mask. However, the guidance says this should be based on individual assessments, taking into account any distress caused to the resident or detrimental impact on communication. Where a face mask causes distress, they may be removed when not in a communal area of the home. It also states that face masks are not routinely required when outdoors.

The guidance states that visitors who feel unwell should not enter the care home. If they have symptoms of transmissible viruses or infections, they should avoid the care home for at least 5 days after they feel better.

Personal care:

Visitors who are providing ‘personal care’ (which isn’t defined) should:
• show proof of a negative lateral flow test – these are being provided free to care homes. If the person is visiting once or twice a week, they should test on those days. If they are visiting more than twice a week, they should test a maximum of twice a week.
• wear appropriate PPE, which should be based on individual assessments, taking into account any distress caused to the resident or detrimental impact on communication
  o when providing close care for a person who has confirmed or suspected covid, gloves and apron should be worn and eye protection is recommended in some circumstances.

**Outbreaks**
The guidance says that if an outbreak is suspected (defined as two or more confirmed or clinically suspected linked cases associated with the home within 14 days) a risk assessment should be undertaken with the local health protection team to see if it is an outbreak and if outbreak measures are needed. If an outbreak is declared, testing may take place and other measures ‘may include’:
• ‘Changes to visiting’ following an individual risk assessment but it states that “some forms of visiting should continue”; and one visitor per resident should always be able to visit inside the care home
• Communal activities may be temporarily reduced or stopped
• Admissions may cease
• Restriction of staff movement
Additional measures may be advised where the risk assessment indicates a variant ‘with vaccine escape potential’ or other concerns.

The length of the outbreak will depend on the characteristics of the home and the results of testing. Details are contained in a separate guidance document (available here) which states that after 10 days with no new cases or newly symptomatic individuals, outbreak recovery testing should be undertaken and if there are no new cases the outbreak measures can be lifted. Local health protection teams may advise restrictions can be stood down sooner, at day seven.

**Professional visitors**
The same precautions outlined above also apply to professionals who need to visit. PPE is recommended. NHS staff and CQC inspectors should test regularly. For other professional visitors, if they are providing personal care, they will follow the same guidance as for visitors (outlined above).

**Other relevant info**
Vaccination is not required for visitors, but the guidance states unpaid carers have a ‘responsibility to be vaccinated’.

**2. Relevant law and regulations**
Decisions about visiting engage residents’ legal rights including:
• **right to family life**, which covers maintaining relationships
• **right to private life**, which covers physical and mental well-being, their autonomy to make their own choices and private, unsupervised contact with their relatives / friends / advocate / other professionals.
Both are protected in UK law by **Article 8 of the Human Rights Act**. Whilst these rights can be restricted, including for the protection of health or the rights of others, a restriction must be proportionate. The onus is on the service provider to justify their interference with these rights, by demonstrating that the decision they have taken is the least restrictive option for that person, having
considered the alternatives. For example, if the provider is only offering limited visiting due to lack of time available in a dedicated meeting room, how are they demonstrating that is a proportionate decision? Has the provider carried out individual assessments and considered other options, such as allowing visits in the resident’s own room which would remove this restriction?

Where a person is prevented from leaving a care home, the right to liberty (protected by Article 5 of the Human Rights Act) requires that this is set out in law, with a process for challenging the restriction of movement (such as a Deprivation of Liberty authorisation).

The duty under the Human Rights Act to respect and protect rights lies not only on public authorities like the government and local authorities, but also on care homes where the care is arranged or paid for (in any part) by the local authority (see section 73 of the Care Act). If your care was arranged and is paid for entirely by you, let a public authority know about your concerns about your rights – like your local authority or the Care Quality Commission. They have a duty to act where they know rights are at risk.

Care homes must carry out individual risk assessments about visiting. This is required by the Human Rights Act (above) and the Equality Act. The latter prohibits indirect discrimination and applies to all care home residents regardless of how their care was arranged or is funded. Blanket decisions will not be appropriate as homes are required to consider individual needs and apply different rules for different residents depending on their individual circumstances.

Where a resident is assessed as lacking capacity to decide about a visit, providers will need to ensure they are adhering to the Mental Capacity Act and acting in the resident’s best interests and imposing the least restrictive option. The principle of well-being underpinning the Care Act also continues to apply.

The regulator, the Care Quality Commission (CQC), has made clear that blanket approaches are unacceptable and the rights of individuals must be paramount around visiting. Concerns such as blanket bans, residents being discouraged from regular contact with relatives/friends or not being allowed to see other professionals may trigger an inspection by CQC which could lead to enforcement action.

CQC’s Regulation 12 (in the Health and Social Care Act 2008 (Regulated Activities) Regulations) requires providers, when considering risk, to act reasonably and adhere to recognised guidance and the principles of the Mental Capacity Act where relevant. Regulation 10 requires them to provide care and treatment in a way that ensures people’s dignity and treats them with respect at all times. Regulation 9 requires the provision of care to be person-centred and include individuals in the planning process where they are able to do so, with support if necessary, linking to the Mental Capacity Act to ensure family/friends/advocates are included in the process where relevant.

**More support**

If you would like further information or any advice or support on how this applies to you or your relative/friend, please get in touch with us. The Relatives & Residents Association Helpline can help you to explore what this guidance means for your family, and support you to use these legal standards to negotiate with a care home for better contact with your relative.

Tel: 020 7359 8136 (9.30am-1pm Monday to Friday, and 6pm-8pm on Thursday)

Email: helpline@relres.org

Webchat: available at www.relres.org