



## Visiting for care home residents

This is a summary of the key law and guidance relevant to visiting in care homes in England. It covers:

1. Government guidance on visiting in care homes
2. Government guidance on visits out of care homes
3. Other 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**

#### **I. Government guidance on visiting people in care homes**

The Government guidance on visiting in care homes is available [here](#) (as updated on 6 April).

#### **Overall approach**

The “default position” is that all care homes should enable the different types of visiting outlined in the guidance. It recognises that “visiting is a central part of care home life” which is “crucially important for maintaining health and wellbeing and quality of life of residents”. It recognises how vital it is for family and friends to maintain relationships and contribute to residents’ care and support. Whilst recognising that visiting brings risk of transmission, “these risks can be managed and mitigated” and should be balanced against the importance of visiting and its benefits.

All care homes should enable:

- **Nominated visitors:** regular visits from up to two named people, indoors
- **Essential caregivers:** additional, more regular support where a person's presence or support is central to maintaining a resident's health and wellbeing
- **Additional visits:** with other relatives/friends outdoors, behind screens/windows or in pods
- **Exceptional circumstances:** for residents nearing the end of life (now defined as the last year of life) or where there are other 'exceptional circumstances'

In the event of an outbreak, visits from essential caregivers and in exceptional circumstances should continue.

The onus is on care home managers to decide how visits should happen to meet the needs and wishes of their residents by developing a visiting policy in consultation with residents and their relatives. When developing their visiting policies, providers should undertake individual risk assessments, taking into account the rights and needs of the individual residents. It stresses “the individual resident, their views, their needs and wellbeing should be taken into account”. The guidance says decisions should be taken in light of providers’ legal duties under the Equality Act and the Human Rights Act, and the Care Quality Commission has regulatory powers that can be used if they have concerns about visiting.

Care homes should involve the resident and their family/friends in decisions and share the risk assessments and visiting policies with them.

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### **Nominated visitors**

All care homes should allow regular, indoor visits for each resident with up to two named visitors. They can visit separately or together as preferred.

Key points:

- Nominated visitors will have to test negative before each visit (using rapid tests which the home provide on-site prior to the visit), wear appropriate PPE, can hold hands but should otherwise minimise contact with the resident.
- The resident will choose who their nominated visitors will be. For residents assessed as lacking capacity to decide, the home should discuss this with their family, friends or others who may have usually visited and use the Mental Capacity Act to make a decision in the resident's best interests.
- As far as possible, the nominated visitors should remain the same. Care homes are advised to take a 'pragmatic' approach to this.
- The guidance says the length and frequency of the visit will depend on the layout of the home and how many other families wish to visit.
- The guidance is not prescriptive about where the visits take place, advising it is in a well-ventilated room.
- If the resident has an essential caregiver, they may also take part in these visits if all agree.

### **Essential caregivers**

In addition to the nominated visitors, regular support can be provided by an essential caregiver.

Key points:

- Intended for circumstances where the visitor's presence or support is central to the health and wellbeing of the resident.
- Can have close physical contact, spend longer in the home and access areas other visitors cannot.
- Individual assessment will weigh up the benefit and risk of such support.
- Usually only one per resident, but depends on the individual circumstances.
- Essential caregivers to have same testing, PPE and infection control arrangements as staff.
- They should agree with staff what tasks they will and will not be performing (clinical care and medical tasks remain the responsibility of the care home staff).
- It is not necessary for essential caregivers to commit to visiting a specific number of times per week.

### **Outdoor or screened visits**

In addition to above visits, these will allow residents to see more people.

The guidance states providers are best placed to decide how these visits happen in practice, but sets out:

- Visits should be in the open air where possible, such as under a covering (2 meters apart) or at a window.
- Visits can take place in pods/a dedicated room with a 'substantial screen', which must only be used by one resident and 'visiting party' at a time and cleaned after.
- Residents are limited to a maximum of two visitors at one time, but an essential caregiver can also be present to support the resident.
- Social distancing must be maintained and appropriate PPE used throughout the visit.

### **Exceptional circumstances such as end of life**

Visits in exceptional circumstances such as end of life "should continue in all circumstances" and "always be supported and enabled".

Key points:

- The guidance defines end of life care as the last year of life, supporting people to live as well as possible and to die with dignity.

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- Care homes should ensure the right visiting arrangements are in place for each resident, facilitating visiting as much as possible, appropriate for the individual's situation.
- As a resident approaches the final months, care homes should communicate well to enable good and timely decisions around care and allow visits.
- Visits should be enabled in the final months and weeks, not just the final days or hours.
- Visitors can have physical contact, including providing personal care and holding hands.
- Lateral flow ('rapid') tests should be used for these visits (provided by the home).

### **Children and young people**

Children and young people can visit. It is not necessary to count babies and very young children (generally under two years of age) towards the maximum of two visitors per resident. A young person can also be an essential caregiver (it recommends this is for older teenagers).

Children are expected to follow infection and prevention control measures, including social distancing and PPE (children aged over 11 wearing the same PPE as adults, but children under 3 shouldn't wear masks).

### **Decisions for different residents/groups of residents**

The guidance states it may be necessary or appropriate for care homes to have different visiting rules for different residents, based on an assessment of the risk of virus and the potential benefits of visits. It says providers should work with the resident and family/friends to develop a "tailored visiting policy" for residents who find COVID-secure visits challenging (such as those unable to leave their rooms, people living with dementia or who may lack capacity on relevant decisions).

The guidance confirms that being on the Shielded Patient List does not prevent a care home resident from having visitors.

### **Precautions / stopping visits**

The guidance calls for 'robust practices for infection prevention and control', including:

- Appropriate PPE is always worn. PPE should be provided for free.
- For residents who have difficulty accepting visitors wearing face coverings, an individual risk assessment should be carried out for the resident and the visitor, including consideration of clear face coverings or visors.
- All visitors should be screened for symptoms of acute respiratory infection (this is not the same as testing).

The guidance says that if an outbreak occurs (defined as two or more confirmed or clinically suspected cases of people associated with the home within 14 days) care homes should stop visiting, except in exceptional circumstances like end of life and for essential caregivers, until the outbreak is confirmed as over (defined as 28 days after the last confirmed/suspected case). It states local authorities may have powers to direct homes to close to visiting. In such instances, homes should set out alternative options for helping families keep in touch and keep relatives updated on the person's mental and physical health.

The guidance also sets out the roles of the local Director of Public Health and local Director of Adult Social Services, in supporting care homes to ensure visiting happens. Their advice to care homes on infection rates should recognise local differences and allow care homes to use their discretion, stressing that blanket approaches are not appropriate. The Director of Public Health may also advise care homes on allowing more visiting opportunities than the generic advice set out the guidance.

### **Other relevant info**

The guidance states that care homes should support visitors, and give tips, on how to prepare for the visit.

The guidance confirms (several times) that vaccination is not required before a visit can go ahead.

There is no time limit set on visits in the guidance, or a requirement for visits to be supervised.

The guidance states the Government's aim that by the summer care home visiting will be as relaxed and normal as possible, only keeping the infection prevention and control measures needed to protect the most vulnerable residents. The guidance will be reviewed and updated again on 17 May.

The guidance is only about visiting in care homes. Separate guidance on visits out of care homes is summarised below. Guidance for supported living settings is available [here](#).

## **2. Government guidance on visits out of care homes**

Government guidance on visits out of care homes is available [here](#) (updated on 7 April).

The guidance recognises that spending time out of the care home is an important part of life and important for a resident's health, wellbeing and their relationships/social networks.

Residents should isolate for 14 days on their return to the care home after a visit out.

The onus is placed on care providers to create a policy on visiting out. The guidance states that visits out should happen with the agreement of the home and following an individual risk assessment. The home should balance the person's needs and circumstances against the risk to others in the home. But it is clear that care homes should always support visits out in exceptional circumstances, such as to visit someone at the end of their life.

Decisions should be taken in line with legal obligations under the Equality Act, Human Rights Act and the Mental Capacity Act where people lack capacity to make a decision on visits out.

On a visit out, the resident should keep the number of people they have contact with to a minimum and everyone should have a rapid test (supplied by the home) before the visit takes place. Social distancing and PPE are not required but the guidance advises distancing and to consider wearing a face covering. The people the resident is visiting are advised to limit their contact with others in the two weeks prior to the visit.

Providers should develop a plan for a visit out about the arrangements and risk mitigation, which is agreed with the resident.

The guidance states it is important that the resident and their family is involved in discussions and that the home should provide clear information about their approach to help support relationships and avoid distress or confusion.

Separate guidance on visits for medical appointments is available [here](#). It does not mention self-isolating after medical appointments.

The guidance states that forming support bubbles is not recommended for care home residents.

Overnight stays are mentioned only for residents of working age.

In the event of an outbreak in the home, the guidance says it should stop outward visiting until the outbreak is under control. But visits out in exceptional circumstances should continue.

### **3. Relevant law and regulations**

Decisions about visiting engage residents' **right to family life**, which covers maintaining relationships, and their **right to private life**, which covers physical and mental well-being and their autonomy to make their own choices (all 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 strict 30 minute visits to all residents due to lack of time available in a dedicated meeting room, is that proportionate for a resident who is distressed or confused and may take 30mins to 'settle into' the visit? Has the provider carried out an individual assessment and considered other options, such as allowing longer visits in the resident's own room?

The right to private life is also relevant to ensuring residents can have private, unsupervised contact with their relatives/friends/advocate/other professionals. 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)**, have issued a statement stressing blanket approaches are unacceptable and the rights of individuals must be paramount when care homes are deciding visiting plans. The government guidance on visiting in care homes makes clear that the CQC has regulatory powers that can be used where they have concerns about 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.

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**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)

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