Westminster Hall debate: The effect of the COVID-19 outbreak on people affected by dementia

Thursday 12 November 2020, 3:00 pm

Introduction

The Equality and Human Rights Commission (the Commission) has been given powers by Parliament to advise Government on the equality and human rights implications of legislation and to publish information or provide advice, including to Parliament, on any matter related to equality, diversity and human rights.

This briefing provides an overview of our key concerns and recommendations for Government related to the rights of older and disabled people living in residential care, with a focus on people living with dementia. It summarises and updates our [briefing on equality and human rights in residential care during coronavirus](https://www.equalityhumanrights.com/sites/default/files/parliamentary_briefing_equality_and_human_rights_in_residential_care_coronavirus.docx), which demonstrates how equality and human rights law provides a practical framework to navigate decisions about maintaining and balancing our full range of rights, helping to assess the impact of restrictions and whether they are proportionate and appropriate to individual needs.

Issue

* The coronavirus pandemic has had a profound impact on those who live in residential care, particularly for people living with dementia who make up approximately 70 per cent of UK care home residents,[[1]](#footnote-1) and has raised serious questions about the value we place on older and disabled people’s lives.
* Representative groups have described how the combination of decisions in the pandemic response either ignored care home residents or treated them as expendable.[[2]](#footnote-2) As we enter the next wave of the pandemic, we have an important opportunity to learn lessons and identify what more needs to be done to safeguard older and disabled people’s rights.
* Almost 19,400 care home residents across England and Wales died with COVID-19 during the first wave of the pandemic up to 12 June, accounting for nearly 40 per cent of all deaths from the virus.[[3]](#footnote-3) Almost half of these individuals had dementia or Alzheimer’s disease.[[4]](#footnote-4) Overall, care home deaths have increased by almost 80 per cent in England compared with previous years.[[5]](#footnote-5)
* The impact of the pandemic stretches beyond loss of life, as measures intended to reduce transmission have isolated residents from family and friends, with a significant impact on their mental and physical health. For people with dementia, isolation can lead to cognitive and other skills deteriorating rapidly, including communication skills and the ability to recognise family members.
* There is evidence that human rights standards may have not been upheld in the response to the pandemic,[[6]](#footnote-6) including in key decisions about hospital discharges, care home admissions, visits, access to critical care and prioritisation of testing, putting people with dementia and other care home residents at greater risk of harm. The European Committee for the Prevention of Torture has stated that older people’s exposure to coronavirus and ‘extreme level of suffering’ may be found incompatible with the UK Government’s obligations to protect life and prevent ill-treatment.[[7]](#footnote-7)
* We are further concerned that equality considerations were not effectively and transparently built into decision-making at the national, regional and local level, both in terms of the immediate risks from coronavirus and the wider impact of restrictions. This may have resulted in failures to comply with the public sector equality duty. We remain concerned about whether sufficient data is being collected to understand and mitigate the potential and actual impacts of policies.[[8]](#footnote-8)

Recommendations

We recommend that the UK Government:

1. **Urgently undertake or commission a review into the experience in care homes during the pandemic**.[[9]](#footnote-9) This should include the impact of policies on hospital discharges, care home admissions, access to critical and other healthcare, testing and PPE, the causes of ‘excess’ deaths in this period and the impact on different groups sharing protected characteristics. Older and disabled people, their relatives and representative bodies must be meaningfully consulted and engaged in establishing and directing the review. The findings should be used on an ongoing basis to identify and implement changes in policy and practice to ensure older people’s rights are protected.
2. **Demonstrate how it has considered, on an ongoing basis, the impact of their decisions on care home residents with different protected characteristics**. This includes showing they have a good evidence base, informed by engagement with representative groups, and taking steps to fill any evidence gaps so far as is reasonably practicable in the circumstances. Where normal data gathering methods are disrupted or inadequate, new sources and alternative methods should be used to gain insight into potential and actual impacts for different groups. Equality impact assessments should be published wherever possible.
3. **Ensure care home residents have full and equal access to necessary healthcare**, including GP services and hospital treatment, and that consultations are carried out face-to-face wherever possible.
4. **Take urgent steps to ensure older and disabled people, and their representative organisations where appropriate, are involved in and consulted on decisions about access to healthcare and treatment**, both in individual cases and at the national policy level. Decisions should be supported by clear, accessible and consistent guidance that fully complies with human rights standards, including the principles of individual autonomy and non-discrimination. **‘Do not resuscitate’ notices that were wrongly applied to people’s care plans must be removed**.
5. **Ensure there is sufficient, reliable and timely testing capacity for residents, professionals and family members** so that people in care homes are not unnecessarily exposed to coronavirus, do not have to isolate unnecessarily and can safely access visits from family, friends and healthcare services.
6. **Ensure measures are in place to guarantee sufficient personal protective equipment for care homes throughout the pandemic**, including equipment with clear panels to mitigate any communication difficulties for disabled people.
7. **Bring forward the ‘key worker’ pilot allowing essential visitors the same access to PPE and regular testing as is envisaged for care home staff,** **and extend the scheme as soon as possible**.
8. **Amend guidance on visits to prohibit blanket restrictions** **and ensure all decisions are based on individual risk assessments**, including when local and national COVID-19 restrictions are in place and during any care home outbreaks. The guidance should be promoted publicly so that providers, residents and visitors are clear about when visits are allowed, and should be kept under review and updated to allow further relaxations where it is safe to do so.
9. **Assess whether restraint and restrictive interventions have increased during the pandemic, and work with providers, the NHS and CQC to identify what additional support is needed** to avoid its use and ensure transparency and effective monitoring and oversight. Guidance on avoiding the use of restraint should build on existing resources and good practice, and reflect the principles set out in the Commission’s [human rights framework for restraint](https://www.equalityhumanrights.com/sites/default/files/human-rights-framework-restraint.pdf). Particular consideration should be given to groups who have impairments or characteristics that increase the risk of harm.
10. **Work with the CQC to** **ensure plans are in place for effective ongoing oversight for care homes throughout the pandemic** and expand inspections as far as possible with priority to those institutions where standards are most at risk, as informed by previous inspections and local intelligence gathering. The CQC should further consider taking immediate steps beyond existing routes to ensure that residents, relatives and staff can report concerns and give feedback on the quality of care while outside visits are restricted.
11. **Take immediate steps to investigate and address the reasons for the drop in applications for deprivation of liberty safeguards**, and work with providers to assess what further support they may need to comply with the requirements and ensure older and disabled people who lack capacity can access independent advocacy.
12. **Incorporate the right to independent living in domestic law to protect the human rights of disabled people during and following the pandemic**.

Additional information on key issues

Below we summarise the key issues that have arisen in care homes during the pandemic, including developments since the publication of our full care homes policy briefing in late October.[[10]](#footnote-10)

### Restrictions on visits

* Not seeing family and friends has potentially serious implications for care home residents’ mental and physical health, particularly over a prolonged period.[[11]](#footnote-11) For those with dementia it can result in cognitive and other skills deteriorating rapidly, including communication skills and the ability to recognise family members.[[12]](#footnote-12) Care home residents may also rely on family members to provide important aspects of their care.[[13]](#footnote-13)
* Restrictions on visits are likely to interfere with people’s rights under Article 8 of the Human Rights Act. Blanket restrictions are unlikely to be compliant with human rights standards.
* From 14 October 2020, a tiered system of coronavirus restrictions applied in England.[[14]](#footnote-14) Research indicates 50 per cent of all care home residents in areas under tier 2 and 3 restrictions (more than 228,000 residents) were denied visits during this time.[[15]](#footnote-15)
* On 13 October, the Government committed to pilot a ‘key worker’ scheme allowing designated visitors access to PPE and testing.[[16]](#footnote-16) However, no additional details on this pilot have been released, with no update as to whether or when the pilot will be launched.
* Updated guidance on visiting arrangements in care homes during the second lockdown was published on 5 November.[[17]](#footnote-17) The guidance provides advice on taking a risk-based approach and implementing precautions to make visits possible, including using screens, visiting pods and window visits’.[[18]](#footnote-18) However, we share concerns that care homes may not have the resources, space or time to build screens or pods, that window visits may not be feasible during winter, and that the new methods for visiting may be unsuitable for those with advanced dementia.[[19]](#footnote-19)
* The guidance provides local public health directors discretion as to whether face-to-face contact is allowed, causing Care England to label the guidance a ‘postcode lottery’ for blanket bans on visiting.[[20]](#footnote-20) Moreover, in the event of an outbreak in a care home, the guidance states visits should be limited to ‘exceptional circumstances such as end of life’ until ‘the outbreak has been brought under control and the care home has recovered’.[[21]](#footnote-21)
* We are pleased that the new guidance includes an instruction that ‘all decisions should be taken in light of general legal obligations, such as those under the Equality Act 2010 and Human Rights Act 1998’.[[22]](#footnote-22) However, research from the British Institute of Human Rights raises serious concerns about the capability of local authority staff to understand and apply minimum human rights obligations in relation to social care.[[23]](#footnote-23)

### Admissions

* In the first stages of the pandemic, the UK Government instructed hospital trusts and clinical commissioning groups to discharge all patients deemed medically fit so they could free up NHS capacity to treat COVID-19 patients.[[24]](#footnote-24) Some individuals were discharged from hospitals into residential care but there was no requirement for testing prior to admission.[[25]](#footnote-25) This has been identified as a potential factor in the spread of coronavirus to care homes.[[26]](#footnote-26)
* On 21 October, the Government introduced a new scheme requiring people being discharged from hospital into a care home with a positive COVID-19 test (or those waiting for a result) to first be admitted into a ‘designated care setting’ and cared for there ‘for the remainder of the required isolation period’.[[27]](#footnote-27) These designated settings can be stand-alone units, but can also be care homes with ‘separate zoned accommodation and staffing’.[[28]](#footnote-28) This has led to concerns that other residents of these care homes might be exposed to the virus.[[29]](#footnote-29)
* Local authorities were required to identify an ‘appropriate designated setting’ by the end of October. [[30]](#footnote-30) However, Health Service Journal reports that as at 5 November, only around 70 local authorities had named a designated setting, and approximately 40 of those had named a care home rated ‘requires improvement’ or ‘inadequate’ by the Care Quality Commission.[[31]](#footnote-31) Care home residents may face delays being discharged from hospital if the local authority has not identified an appropriated designated setting, potentially increasing their risk of exposure to COVID-19. This is likely to be exacerbated if hospital admissions increase sharply in the second wave of the pandemic.[[32]](#footnote-32)

### Testing

* We continue to have concerns about delays in obtaining test results. While we welcome the recent announcement to improve testing capacity,[[33]](#footnote-33) providers have consistently reported difficulties on the ground and delays getting results.[[34]](#footnote-34)
* Requirements for care home residents to isolate in the absence of testing or confirmed results can have a significant effect on their mental and physical health. Care home staff and family members interviewed by Amnesty International reported that ‘many residents have suffered loss of movement, reduced cognitive functions, reduced appetite, and loss of motivation to engage in conversation and other activities which they used to enjoy before lockdown’.[[35]](#footnote-35) Delays in testing could also result in care home residents spending more time than necessary in hospitals and designated care settings.

### Withdrawal of healthcare

* Healthcare resources were reprioritised during the first wave to meet the immediate impact of the pandemic, resulting in the withdrawal of GP and other routine healthcare services from care homes.[[36]](#footnote-36) The British Geriatrics Society has also raised concerns about lack of access to palliative care, including access to palliative medications.[[37]](#footnote-37) Evidence suggests this has had a broader impact on residents’ health, potentially contributing to the number of ‘excess’ deaths in this period.[[38]](#footnote-38)
* Reductions in access to routine, critical and palliative healthcare has implications for Article 3 of the Human Rights Act. The European Committee for the Prevention of Torture is clear that ‘an inadequate level of health care can lead rapidly to situations falling within the scope of the term “inhuman and degrading treatment”’.[[39]](#footnote-39) The withdrawal of core health services is also a direct challenge to the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights. The UN Secretary General has emphasised that even where health services unrelated to COVID-19 are scaled back, the right to health requires that older people ‘continue to receive integrated health and social care, including palliative care, rehabilitation, and other types of care’.[[40]](#footnote-40)
* Reports emerged about blanket policies on access to critical care. Guidance initially stated that all patients should be assessed for frailty on admission to hospital, irrespective of COVID-19 status.[[41]](#footnote-41) This was updated in response to serious concerns we and others raised that it would result in some older and disabled people being denied essential treatment.[[42]](#footnote-42) Some hospitals reportedly operated blanket ‘no admission’ policies for care homes residents with COVID-19 symptoms.[[43]](#footnote-43) There have been extremely concerning reports that ‘do not resuscitate’ notices were applied to people’s care plans without consultation.[[44]](#footnote-44) The Government has asked the Care Quality Commission to review this.[[45]](#footnote-45)

### Deprivation of liberty safeguards

* Some people with dementia may not have capacity to make decisions about their care and treatment, including decisions about whether they move into a care home, their routine and whether they are allowed to leave. In these cases, restricting the person’s freedom could amount to an unlawful deprivation of liberty under Article 5 of the Human Rights Act if appropriate safeguards are not in place.
* The deprivation of liberty safeguards (DoLS) under the Mental Capacity Act 2005 respond to this by creating a series of checks to make sure any restrictions are necessary, appropriate and in the individual’s best interests. The Act provides that people should be supported to make decisions as far as possible, including through access to advocacy, and that any limits on their freedom should be the least restrictive option available.[[46]](#footnote-46)
* Some measures introduced to manage COVID-19 in care homes could create new restrictions on people’s freedom - for example requirements to isolate, social distance or undergo testing. We are concerned that policy-makers and providers may not be considering the impact of these restrictions, whether there is a less restrictive option and what is in the individual’s best interests. More generally, we are concerned that providers may be departing from DoLS requirements during the pandemic. The Court of Protection has reported a ‘striking and troubling’ drop in DoLS applications and a significant reduction in referrals to advocacy services.[[47]](#footnote-47) Without support for decision-making, people may not be able to make their own decisions about care and treatment, including end-of-life planning. It is not yet clear from the evidence available to what extent government guidance on DoLS during the pandemic has mitigated these issues.[[48]](#footnote-48)
* Restrictions on residents’ freedoms and lack of access to advocacy and supported decision-making may also amount to an inference with disabled people’s enjoyment of the right to independent living, protected under Article 19 of the UN Convention on the Rights of Persons with Disabilities. Other restrictions, such as not being able to leave care homes or restrictions on socialising and leisure activities may also have an effect on independent living.[[49]](#footnote-49)

Further information

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006. Find out more about our work on our [website](http://www.equalityhumanrights.com/).

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1. Alzheimer’s Society (September 2020), ‘[Worst hit: dementia during coronavirus](https://www.alzheimers.org.uk/sites/default/files/2020-09/Worst-hit-Dementia-during-coronavirus-report.pdf)’, p. 13; Age UK (May 2019), ‘[Later life in the United Kingdom 2019](https://www.ageuk.org.uk/globalassets/age-uk/documents/reports-and-publications/later_life_uk_factsheet.pdf)’. [↑](#footnote-ref-1)
2. Silver Voices (6 May 2020), ‘“Ignored and expendable”: what are older lives worth? (briefing 30/20)’ [unpublished]. See also Amnesty International (October 2020), ‘[As If Expendable: the UK Government’s failure to protect older people in care homes during the Covid-19 pandemic](https://www.amnesty.org.uk/files/2020-10/Care%20Homes%20Report.pdf?kd5Z8eWzj8Q6ryzHkcaUnxfCtqe5Ddg6=)’. [↑](#footnote-ref-2)
3. The most recent analysis of the impact of coronavirus on the care sector is for the period up to 12 June. ONS (3 July 2020), ‘[Deaths involving COVID-19 in the care sector, England and Wales: deaths occurring up to 12 June 2020 and registered up to 20 June 2020 (provisional)](https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/deathsinvolvingcovid19inthecaresectorenglandandwales/latest)’, figure 2; and ONS (23 June 2020), ‘[Comparison of weekly death occurrences in England and Wales: up to week ending 12 June 2020](https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/causesofdeath/articles/comparisonofweeklydeathoccurrencesinenglandandwales/uptoweekending12june2020)’, figure 1. In this period there were 46,425 deaths involving COVID-19 reported in England, including 18,562 among care home residents (39.8 per cent) and 2,370 deaths involving COVID-19 reported in Wales, including 826 among care home residents (34.9 per cent). This includes care home residents who died in care homes and in hospitals. The ONS definition of ‘involving COVID-19’ is where COVID-19 was mentioned anywhere on the death certificate, whether as an underlying cause or not. [↑](#footnote-ref-3)
4. ONS (3 July 2020), ‘[Deaths involving COVID-19 in the care sector, England and Wales: deaths occurring up to 12 June 2020 and registered up to 20 June 2020 (provisional)](https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/deathsinvolvingcovid19inthecaresectorenglandandwales/latest)’, figure 14. [↑](#footnote-ref-4)
5. Bell, D. et al. (29 August 2020), ‘[COVID-19 mortality and long-term care: a UK comparison](https://ltccovid.org/wp-content/uploads/2020/08/COVID-19-mortality-in-long-term-care-final-Sat-29-v1.pdf)’, International Long Term Care Policy Network. The analysis compares the number of deaths during weeks 11-26 of 2020 (the peak of the first wave of the pandemic) to average weekly deaths during the previous 5-year period, as a measure of ‘excess deaths’. This approach deals with misdiagnosed deaths and deaths that have other immediate causes but would not have occurred without the pandemic. [↑](#footnote-ref-5)
6. Including rights under the Human Rights Act (such as the right to life (Article 2), the right to freedom from ill-treatment (Article 3), the right to liberty (Article 5), the right to private and family life (Article 8)), the right to health under Article 12 of the International Covenant on Economic, Social and Cultural Rights, and disabled people’s right to live independently under Article 19 of the UN Convention on the Rights of Persons with Disabilities. For more details about the equality and human rights framework in relation to care homes, please see our policy briefing. Equality and Human Rights Commission (20 October 2020), ‘[Equality and human rights in residential care during coronavirus: briefing for England](file:///%5C%5CDocStore%5CCorporate%5CEHRC%20General%5CPolicy%5CPriorityAim-Institutions%5CSocial%20care%5CA3%20-%20Influencing%20strategy%5CEquality%20and%20human%20rights%20in%20residential%20care%20during%20coronavirus)’. [↑](#footnote-ref-6)
7. Council of Europe (7 April 2020), ‘[Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: a toolkit for member states](https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40)’, p. 5. [↑](#footnote-ref-7)
8. Care home deaths were not included in official reports until 29 April. The latest analysis of COVID-19 in the care sector is up to 20 June 2020. ONS reporting does not include ethnicity data or a breakdown of disability by impairment type. See Raleigh, V. (19 August 2020), ‘[Deaths from Covid-19 (coronavirus): how are they counted and what do they show?](https://www.kingsfund.org.uk/publications/deaths-covid-19)’, The King’s Fund; ONS (3 July 2020), ‘[Deaths involving COVID-19 in the care sector, England and Wales: deaths occurring up to 12 June 2020 and registered up to 20 June 2020 (provisional)](https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/deathsinvolvingcovid19inthecaresectorenglandandwales/latest)’; ONS (6 October 2020), ‘[Deaths registered weekly in England and Wales, provisional: week ending 25 September 2020](https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/deathsregisteredweeklyinenglandandwalesprovisional/weekending25september2020)’. [↑](#footnote-ref-8)
9. The Government has procedural obligations under Article 2 of the Human Rights Act to investigate deaths, and cases where an individual has sustained life-threatening injuries, regardless of who is responsible. See European Court of Human Rights (31 August 2020), ‘[Guide on Article 2 of the European Convention of Human Rights: Right to life](https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf)’. [↑](#footnote-ref-9)
10. Equality and Human Rights Commission (20 October 2020), ‘[Equality and human rights in residential care during coronavirus: briefing for England](file:///%5C%5CDocStore%5CCorporate%5CEHRC%20General%5CPolicy%5CPriorityAim-Institutions%5CSocial%20care%5CA3%20-%20Influencing%20strategy%5CEquality%20and%20human%20rights%20in%20residential%20care%20during%20coronavirus)’. [↑](#footnote-ref-10)
11. Age UK (22 September 2020), ‘[Visiting in care homes: where now?](https://www.ageuk.org.uk/discover/2020/09/visiting-in-care-homes-where-now/)’. [↑](#footnote-ref-11)
12. See [written evidence submitted by Alzheimer’s Society (DEL0115)](https://committees.parliament.uk/writtenevidence/4305/html/) to the Health and Social Care Select Committee’s inquiry on ‘Delivering core NHS and care services during the pandemic and beyond’. [↑](#footnote-ref-12)
13. Alzheimer’s Society (9 July 2020), ‘[An open letter to the Government – allow family carers key worker status](https://www.alzheimers.org.uk/news/2020-07-09/open-letter-secretary-state)’; Age UK (22 September 2020), ‘[Visiting in care homes: where now?](https://www.ageuk.org.uk/discover/2020/09/visiting-in-care-homes-where-now/)’. [↑](#footnote-ref-13)
14. Foster, D. & Harker, R. (6 November 2020), ‘[Briefing Paper: Coronavirus: Adult social care key issues and sources](https://commonslibrary.parliament.uk/research-briefings/cbp-9019/)’. House of Commons Library, Number 9019. [↑](#footnote-ref-14)
15. Tapper, J. (7 November 2020), ‘[Care home residents face postcode lottery over face-to-face visits](https://www.theguardian.com/society/2020/nov/07/care-homes-they-dont-put-loneliness-on-death-certificates-but-it-is-a-killer)’. [↑](#footnote-ref-15)
16. Health and Social Care Committee (13 October 2020), [Oral evidence: Coronavirus, lessons learnt](https://committees.parliament.uk/oralevidence/1032/html/), HC 877, q. 61. [↑](#footnote-ref-16)
17. Department of Health and Social Care (5 November 2020), ‘[Visiting arrangements in care homes for the period of national restrictions](https://www.gov.uk/government/publications/visiting-care-homes-during-coronavirus/update-on-policies-for-visiting-arrangements-in-care-homes)’. [↑](#footnote-ref-17)
18. Ibid. [↑](#footnote-ref-18)
19. BBC News (5 November 2020), ‘[Covid: Care home visits advice impractical, say charities](https://www.bbc.co.uk/news/uk-54815587)’. [↑](#footnote-ref-19)
20. Tapper, J. (7 November 2020), ‘[Care home residents face postcode lottery over face-to-face visits](https://www.theguardian.com/society/2020/nov/07/care-homes-they-dont-put-loneliness-on-death-certificates-but-it-is-a-killer)’. [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. Department of Health and Social Care (5 November 2020), ‘[Visiting arrangements in care homes for the period of national restrictions](https://www.gov.uk/government/publications/visiting-care-homes-during-coronavirus/update-on-policies-for-visiting-arrangements-in-care-homes)’. [↑](#footnote-ref-22)
23. See British Institute of Human Rights (August 2020), ‘[The Joint Committee on Human Rights Inquiry into the human rights implications of the UK Government’s Covid-19 response: Evidence from staff working in health, care and social work](https://www.bihr.org.uk/Handlers/Download.ashx?IDMF=e08af165-95dc-4451-a47a-bb6129bf380f)’, and British Institute of Human Rights (24 March 2020) ‘[Human Rights Implications of the Coronavirus Bill: The risk of making vulnerable adults and children even more vulnerable](https://www.bihr.org.uk/coronavirusbill-20march)’. [↑](#footnote-ref-23)
24. See NHS England and NHS Improvement (17 March 2020), [Letter: Important and urgent – next steps on NHS response to COVID-19](https://www.england.nhs.uk/coronavirus/wp-content/uploads/sites/52/2020/03/urgent-next-steps-on-nhs-response-to-covid-19-letter-simon-stevens.pdf); Department of Health and Social Care (19 March 2020), ‘[COVID-19 hospital discharge service requirements](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880288/COVID-19_hospital_discharge_service_requirements.pdf)’; Department of Health and Social Care (16 April 2020), ‘[COVID-19: our action plan for adult social care](https://www.gov.uk/government/publications/coronavirus-covid-19-adult-social-care-action-plan/covid-19-our-action-plan-for-adult-social-care)’; and Welsh Government and Public Health Wales (April 2020), ‘[COVID-19 Hospital Discharge Service Requirements (Wales)](https://gov.wales/sites/default/files/publications/2020-04/covid-19-hospital-discharge-service-requirements.pdf)’. [↑](#footnote-ref-24)
25. See e.g. Bell, D. et al. (29 August 2020), ‘[COVID-19 mortality and long-term care: a UK comparison](https://ltccovid.org/wp-content/uploads/2020/08/COVID-19-mortality-in-long-term-care-final-Sat-29-v1.pdf)’, International Long Term Care Policy Network. [↑](#footnote-ref-25)
26. Ibid. [↑](#footnote-ref-26)
27. Department of Health and Social Care (21 October 2020), ‘[Correspondence: Winter discharges: designated settings](https://www.gov.uk/government/publications/designated-premises-scheme-letter-to-directors-of-adult-social-services/winter-discharges-designated-settings)’. [↑](#footnote-ref-27)
28. Ibid. [↑](#footnote-ref-28)
29. Pring, J. (22 October 2020), ‘[Activists’ anger after watchdog supports ministers’ “abhorrent” care home COVID policy](https://www.disabilitynewsservice.com/activists-anger-after-watchdog-supports-ministers-abhorrent-care-home-covid-policy/)’, Disability News Service. [↑](#footnote-ref-29)
30. Department of Health and Social Care (21 October 2020), ‘[Correspondence: Winter discharges: designated settings](https://www.gov.uk/government/publications/designated-premises-scheme-letter-to-directors-of-adult-social-services/winter-discharges-designated-settings)’. [↑](#footnote-ref-30)
31. Brennan, S. (5 November 2020), ‘[Exclusive: Covid-positive care home plan failing to relieve pressure on crowded hospitals](https://www.hsj.co.uk/coronavirus/exclusive-covid-positive-care-home-plan-failing-to-relieve-pressure-on-crowded-hospitals/7028754.article)’, Health Service Journal. The delay in identifying designated settings was attributed to high insurance costs, fear of high mortality rates and reputational damage to the designated care homes. [↑](#footnote-ref-31)
32. Ibid. [↑](#footnote-ref-32)
33. The UK Government has committed to ensure sufficient testing capacity in care homes as part of the winter plan. Department of Health and Social Care (18 September 2020), ‘[Adult social care: coronavirus (COVID-19) winter plan 2020 to 2021](https://www.gov.uk/government/publications/adult-social-care-coronavirus-covid-19-winter-plan-2020-to-2021)’. [↑](#footnote-ref-33)
34. See e.g. National Care Association (12 May 2020), ‘[Covid 19 statement from the Board of National Care Association](https://nationalcareassociation.org.uk/news-events/news/covid-19-statement-from-the-board-of-national-care-association)’; National Care Foundation (5 May 2020), ‘[NCF survey finds that only 22 per cent of social care workers have been able to access testing](https://www.nationalcareforum.org.uk/ncf-press-releases/ncf-survey-finds-that-only-22-of-social-care-workers-have-been-able-to-access-testing/)’; and Amnesty International (October 2020), ‘[As If Expendable: the UK Government’s failure to protect older people in care homes during the Covid-19 pandemic](https://www.amnesty.org.uk/files/2020-10/Care%20Homes%20Report.pdf?kd5Z8eWzj8Q6ryzHkcaUnxfCtqe5Ddg6=)’. [↑](#footnote-ref-34)
35. Amnesty International (October 2020), ‘[As If Expendable: the UK Government’s failure to protect older people in care homes during the Covid-19 pandemic](https://www.amnesty.org.uk/files/2020-10/Care%20Homes%20Report.pdf?kd5Z8eWzj8Q6ryzHkcaUnxfCtqe5Ddg6=)’. [↑](#footnote-ref-35)
36. British Medical Association (July 2020), ‘[The hidden impact of COVID-19 on patient care in the NHS in England](https://www.bma.org.uk/media/2841/the-hidden-impact-of-covid_web-pdf.pdf)’. See also Amnesty International (October 2020), ‘[As If Expendable: the UK Government’s failure to protect older people in care homes during the Covid-19 pandemic](https://www.amnesty.org.uk/files/2020-10/Care%20Homes%20Report.pdf?kd5Z8eWzj8Q6ryzHkcaUnxfCtqe5Ddg6=)’, p. 23; Alzheimer’s Society (13 May 2020), ‘[Care homes “left to fend for themselves” against coronavirus](https://www.alzheimers.org.uk/news/2020-05-13/care-homes-left-fend-themselves-against-coronavirus)’. Current UK Government guidance advises that routine non-essential medical appointments should be postponed. Department of Health and Social Care (16 September 2020), ‘[Admission and care of residents in a care home during COVID-19, version 2](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/893717/admission-and-care-of-residents-during-covid-19-incident-in-a-care-home.pdf)’. [↑](#footnote-ref-36)
37. British Geriatrics Society (2 June 2020), ‘[COVID-19: Managing the COVID-19 pandemic in care homes for older people (Version 3)](https://www.bgs.org.uk/resources/covid-19-managing-the-covid-19-pandemic-in-care-homes)’. [↑](#footnote-ref-37)
38. Bell, D. et al. (29 August 2020), ‘[COVID-19 mortality and long-term care: a UK comparison](https://ltccovid.org/wp-content/uploads/2020/08/COVID-19-mortality-in-long-term-care-final-Sat-29-v1.pdf)’, International Long Term Care Policy Network. We discuss the impacts in more detail in the section on the right to health. [↑](#footnote-ref-38)
39. Council of Europe (7 April 2020), ‘[Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: a toolkit for member states](https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40)’, p. 5. [↑](#footnote-ref-39)
40. United Nations (May 2020), ‘[Policy Brief: The Impact of COVID-19 on older persons](https://www.un.org/development/desa/ageing/wp-content/uploads/sites/24/2020/05/COVID-Older-persons.pdf)’, p. 6. [↑](#footnote-ref-40)
41. National Institute for Health and Care Excellence (25 March 2020), ‘[NICE updates rapid COVID-19 guideline on critical care](https://www.nice.org.uk/news/article/nice-updates-rapid-covid-19-guideline-on-critical-care)’. [↑](#footnote-ref-41)
42. Ibid. The Commission also wrote to the British Medical Association about this issue in April. Equality and Human Rights Commission (23 April 2020), [Letter: BMA ethical guidelines](https://www.equalityhumanrights.com/sites/default/files/letter-british-medical-association-ethical-guidelines-23-april-2020.pdf). [↑](#footnote-ref-42)
43. See e.g. the Queen’s Nursing Institute (August 2020), ‘[The experience of care home staff during Covid-19](https://www.qni.org.uk/wp-content/uploads/2020/08/The-Experience-of-Care-Home-Staff-During-Covid-19-2.pdf)’; and Amnesty International (October 2020), ‘[As If Expendable: the UK Government’s failure to protect older people in care homes during the Covid-19 pandemic](https://www.amnesty.org.uk/files/2020-10/Care%20Homes%20Report.pdf?kd5Z8eWzj8Q6ryzHkcaUnxfCtqe5Ddg6=)’. [↑](#footnote-ref-43)
44. Ibid. See also Age UK (7 April 2020), ‘[Age UK response to DNR forms during Covid-19 crisis](https://www.ageuk.org.uk/latest-press/articles/2020/04/age-uk-response-to-dnr-forms/)’ and British Institute of Human Rights (August 2020), ‘[The Joint Committee on Human Rights Inquiry into the human rights implications of the UK Government’s Covid-19 response: Evidence from staff working in health, care and social work](https://www.bihr.org.uk/Handlers/Download.ashx?IDMF=e08af165-95dc-4451-a47a-bb6129bf380f)’ (noting that 34 per cent of surveyed staff working in health and social care felt pressure to put a DNR notice in place without involving the person in the decision). [↑](#footnote-ref-44)
45. Care Quality Commission (12 October 2020), ‘[CQC to review use of DNACPR during pandemic](https://www.cqc.org.uk/news/stories/cqc-review-use-dnacpr-during-pandemic)’. [↑](#footnote-ref-45)
46. Office of the Public Guardian (2007), ‘[Mental Capacity Act 2005: Code of Practice](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/497253/Mental-capacity-act-code-of-practice.pdf)’, p. 19. [↑](#footnote-ref-46)
47. Judiciary of England and Wales (4 May 2020), [Correspondence from Mr Justice Hayden, the Vice President of the Court of Protection](https://courtofprotectionhandbook.files.wordpress.com/2020/05/letter-vp-to-adass-4-may-2020.pdf). The CQC has made clear that safeguards remain in force during the pandemic, and that deprivations of liberty should be avoided unless absolutely necessary and proportionate to avoid harm in the individual case. Care Quality Commission (26 May 2020), ‘[Working within the Mental Capacity Act during the coronavirus pandemic](https://www.cqc.org.uk/guidance-providers/all-services/working-within-mental-capacity-act-during-coronavirus-pandemic)’ [accessed 7 October 2020]. [↑](#footnote-ref-47)
48. Guidance was updated most recently on 15 October 2020. Department of Health & Social Care (15 October 2020), ‘[The Mental Capacity Act (2005) (MCA) and deprivation of liberty safeguards (DoLS) during the coronavirus (COVID-19) pandemic: additional guidance](https://www.gov.uk/government/publications/coronavirus-covid-19-looking-after-people-who-lack-mental-capacity/the-mental-capacity-act-2005-mca-and-deprivation-of-liberty-safeguards-dols-during-the-coronavirus-covid-19-pandemic-additional-guidancea)’. [↑](#footnote-ref-48)
49. See, for example, concerns summarised by representatives of the Relatives and Residents Association in [oral evidence to the APPG on Coronavirus (12 August 2020)](https://d3n8a8pro7vhmx.cloudfront.net/marchforchange/pages/344/attachments/original/1597776197/239125_APPG_on_Coronavirus_Session_3_TSC.pdf?1597776197), p. 6: ‘many of the callers to our helpline have been telling us that the current situation in care homes is now very much like a prison with such restricted visiting, residents unable to leave the grounds of the home and those limited interactions with other residents and staff’. [↑](#footnote-ref-49)