

Alison Murray  
Deputy Director for ASC  
Care Quality Commission (CQC)

Cathie Williams and Anna Hemmings  
Joint Chief Executives  
ADASS

By Email

20th February 2024

Dear Alison

**Re: Update on visiting regulations consultation**

Thank you for inviting us to respond to the update on visiting regulations – The Health and Social Care Act 2008 (Regulated Activities) (Amendment) Regulations 2023.

It is widely known that any restriction of visits to and from friends and family for older and disabled people in residential homes and other settings has a profoundly detrimental effect on their health, welfare and wellbeing and can result in both physical and mental deterioration. Isolation and loneliness can be harmful to us all and for those who lack capacity or who are reaching the end of their lives, it is particularly devastating. It also has a profound impact on family and friends.

During the Covid pandemic people in residential homes experienced this exponentially, suffering prolonged isolation, with visits being severely restricted and this restriction continuing for many despite guidance changing. Fear at the beginning of the pandemic was widespread with many people at home also refusing home care services. We know from these real experiences that this led to significant and widespread deterioration in some peoples' wellbeing and grief and distress for families. However, we must also be clear that there was also a risk of illness and death from infection, that there were times when PPE and testing weren't available and that both public health and social and psychological risks have to be balanced. Families, providers and councils faced the most difficult of circumstances.

Taking away the rights of people to make their own choices about those risks or take part in conversations around joint decision-making runs contrary to Article 8 of the Human Rights Act 1998 and Section 4 of the Mental Capacity Act 2005. It also runs the risk of creating a 'closed environment' (characterised by limited access to people outside of the care environment) which we know raised safeguarding risks for the people involved. There may also be further breaches to Article 8 and an unlawful deprivation of liberties in some circumstances.

Restricting the right to see family, friends and have a private life to protect others should only be done where providers have found no possible alternative after considering all other options available to them, and residents and their families, friends and advocates have been involved in the decision-making.

We produced a visiting guidance note during the pandemic (ADASS visiting guidance – 02.11.20\_revised 06.12\_FINAL.pdf) to support Directors of Adult Social Services in relation to care home visits from a Human Rights perspective, and to support them fulfilling their Public Sector Equalities Duty and the requirements in the Care Act 2014 relating to personalised approaches and wellbeing. The Care Act is underpinned by a wellbeing principle, which requires local authorities to promote individuals' wellbeing when carrying out their care and support functions, which should include a focus promoting independent living, and enabling

individuals to participate as fully as possible in decisions including by providing information and advocacy.

Having raised concerns about the government guidance on several occasions during the pandemic, where a lack of clarity resulted in the guidance being interpreted differently across the country, we welcome an update to the visiting regulations. It is encouraging to see that providers should support people who use their service to receive visits in person from people they want to see, when they want to see them, as far as reasonably possible doing all they can to make this happen.

It is also reassuring that providers must make sure they take people's mental capacity into account, as well as their ability to consent and that they must make sure that either the person, or someone lawfully acting on their behalf are involved in planning, managing and reviewing their care and treatment and the right to have visitors. We would question if the guidance has gone far enough however in the following areas:

- The identified settings and where this leaves those who reside in other provision, such as Extra Care, Supported Living Schemes and Shared Lives where visits may be restricted in some circumstances. Guidance should explicitly cover the arrangements for all settings in the context of safely enabling care users to live the fullest lives they can.
- We would ask whether there be something more explicit around choice for individuals where that choice impacts on other people - such as a designated wing of a hospital or care home for those who believe that for them the risk of infection is higher than the risk of isolation, if we are ever facing another pandemic in the future.

Consistency and clarity for both providers, residents, and their families is welcome though we may again face difficult collective challenges.

Yours sincerely,



Anna Hemmings  
Joint Chief Executive

*C Williams*

Cathie Williams  
Joint Chief Executive

## About ADASS

The Association of Directors of Adult Social Service (ADASS) is a charity. Our members are current and former Directors of Adult Care or Social Services and their senior staff, including principal social workers. Our Objectives include:

- Furthering comprehensive, equitable, social policies and plans which reflect and shape the economic and social environment of the time.
- Furthering the interests of those who need social care services, regardless of their backgrounds and status, and
- Promoting high standards of social care services

If you have any questions about this response, please contact [karen.buckham@adass.org.uk](mailto:karen.buckham@adass.org.uk)