

# **British Association of Social Workers England response to: The Joint Committee on Human Rights - Government's response to the covid-19 pandemic - call for evidence**

The British Association of Social Workers (BASW) is the professional association for social work in the UK. With over 20,000 members we exist to promote the best possible social work services for all people who may need them.

## **Care Home and Hospital Visits:**

1. Guidance contained within the adult social care covid-19 winter plan emphasise the role of social workers in assisting with the assessment of risk for visits. Advice for providers has been to consider the legal decision-making framework offered by the Mental Capacity Act for individuals.
2. The MCA and Deprivation of Liberty Safeguards is concerned with the freedoms, choices, and best interests of individuals. Upholding the human rights of individuals in a situation where the risk to the health and life of multiple individuals including those in need of care, their families and staff supporting them has presented enormous ethical and practical dilemmas and challenges for social workers and care providers. Decisions made to restrict, reduce and prevent visits in some cases for prolonged periods of time. This brings into question the legality of such measures from an article 5 and 8 human rights perspective when applying the necessary and proportionate test, leading to the prioritisation of some human rights over others; namely article 2 the right to life. <sup>1</sup>
3. There is an understanding of why restrictive measures were introduced however, the application of such measures has resulted in variations locally, regionally and nationally, leading to disputes and emotional distress, within some cases, families unable to see their loved one before they passed away. As these measures are so severe and unthinkable before the pandemic, there is a need for them to be continuously reviewed and reevaluated. This has not been happening consistently or fairly across the country in care and health settings leading to inconsistent practice.<sup>2</sup>
4. Identification of when a visit by family or professionals can take place has been left to care providers to determine when and whether this is feasible and when it is necessary and proportionate to restrict access. Differences in environment, space, building layout, staffing, numbers of people living in care settings and number of visitors have led to local, regional and national

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<sup>1</sup>[https://www.equalityhumanrights.com/sites/default/files/parliamentary\\_briefing\\_equality\\_and\\_human\\_rights\\_in\\_residential\\_care\\_coronavirus.docx](https://www.equalityhumanrights.com/sites/default/files/parliamentary_briefing_equality_and_human_rights_in_residential_care_coronavirus.docx)

<sup>2</sup> <https://www.healthwatch.co.uk/response/2020-12-21/call-better-guidance-care-home-visits-read-our-letter-government>

differences in the application of the guidance. Some providers have taken a risk adverse approach: introducing blanket restrictions preventing all contact, whilst others have taken the view that the promotion of family contact is essential to people's well-being.<sup>3</sup>

5. Family visiting and access within supported accommodation has been limited / restricted which has had an adverse impact on people, particularly those who do not understand why this is happening. Providers report increases in distressed behaviour from individuals they support. <sup>4</sup>
6. The right balance has not been struck, many families have been significantly impacted in terms of their mental and emotional health, by not being able to visit their loved ones.
7. Social workers undertake statutory and non- statutory duties on behalf of local authorities and the NHS but have been prevented from gaining safe access due to a lack of prioritisation for regular testing. <sup>5</sup>
8. Where the individual has a social worker, they could support the provider with a holistic risk assessment enabling a full exploration with family members about the ethical and moral issues in balancing the right to life and the right to private and family life.<sup>6</sup>
9. Access to individuals by professionals in care and health settings has been restricted and in a lot of cases prevented. The balance has tipped to safeguard Article 2 the right to life and in doing so the interference and subsequent breach of Article 8 right to private and family life has ensued.
10. Without safe access to care and health settings, social workers are struggling to carry out mental capacity assessments or weigh in the balance what is in a person's best interests, necessary and proportionate and the least restrictive option. There is a heavy reliance on third party or incomplete information to inform professional judgements which leaves decision making open to challenge.<sup>7</sup>
11. Given the reduced number of visits and lack of oversight on arrangements by family and professionals, there is a concern about closed cultures and what could be happening to people in terms of restraint, segregation, and seclusion.

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<sup>3</sup> <https://www.alzheimers.org.uk/get-involved/our-campaigns/coronavirus/social-care>

<sup>4</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919162/6\\_People\\_with\\_Learning\\_Disabilities\\_and\\_Autistic\\_People\\_Advisory\\_Group\\_report\\_accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919162/6_People_with_Learning_Disabilities_and_Autistic_People_Advisory_Group_report_accessible.pdf)

<sup>5</sup> <https://www.basw.co.uk/test-safe-access-promote-rights/about>

<sup>6</sup> <https://www.gov.uk/government/publications/adult-social-care-coronavirus-covid-19-winter-plan-2020-to-2021/adult-social-care-our-covid-19-winter-plan-2020-to-2021>

<sup>7</sup> <https://www.basw.co.uk/test-safe-access-promote-rights/about>

<sup>8</sup> <https://www.cqc.org.uk/publications/themed-work/rssreview>

12. There is a question as to why there has not been an increase in DOLS applications and authorisations when levels of restrictions on liberty at their highest levels.<sup>9</sup>

13. The following are responses we received to our Hospital Discharge Survey:

- *“We are unable to visit the hospital wards unless support is required for safeguarding concerns of mental capacity. We are unable to liaise with the individual themselves or able to gather accurate information. I fear this is becoming the norm.”*
- *“My team and I have huge concerns regarding the legality of MCA’s and BI decisions being made. We are told frequently that someone lacks capacity and those assessments appear to be undertaken by individuals who don’t understand the legal framework. There are too many occasions where an individual has expressed a wish to go home they have been assessed as lacking capacity, whereas if they had agreed to go to a care home they are reported as having capacity.”*
- *“It makes me anxious to separate couples/families by placing one into a care home as that is the recommendation for discharge. You then can have a husband and wife for instance that haven’t seen each other for weeks and then one of them could die. “*

14. Top 3 challenges identified in relation to Human Rights through a BASW survey of hospital discharge social workers in October 2020

- Rights not upheld, decisions on discharge destination being made for people, not capturing people's voice
- Completing a good legally compliant assessment
- Misunderstanding of MCA among hospital staff leading to an over reliance on care homes which can lead to institutionalisation.

#### **The human rights impacts:**

15. People, families, and communities affected: all of those people confined to rooms, contact within settings restricted, contact with family and the outside world restricted or prevented.

16. BASW England fully supports the statement made by Vic Rayner Executive Director National Care Forum and Caroline Abrahams Director at Age UK

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<sup>9</sup>[https://www.equalityhumanrights.com/sites/default/files/parliamentary\\_briefing\\_equality\\_and\\_human\\_rights\\_in\\_residential\\_care\\_coronavirus.docx](https://www.equalityhumanrights.com/sites/default/files/parliamentary_briefing_equality_and_human_rights_in_residential_care_coronavirus.docx)

about the vital role that family relationships play in improving the individual social/emotional health of people in care and health settings<sup>10</sup>

17. COVID-19 accounted for 54% of deaths of adults with learning disabilities in residential care in the period set out the report by [Public Health England](#)
18. This is far greater than the general population. A similar percentage of people with learning disabilities living in the community COVID-19 accounted for 53% of deaths.
19. With the second wave of the pandemic and a national lockdown, blanket restrictions preventing visits to care and health settings across the country, leads to the increased risk of people's voices going unheard which could lead to more deaths over the coming months.
20. In BASW England's response to the Deaths from COVID19 reviewed as part of the LeDeR programme- published by the University of Bristol <sup>11</sup> of the 50 people whose deaths were reviewed between 19.3.20-19.5.20, 88% of people died in hospital. 78% had a DNACPR in place, 20% of people had been discharged and then re-admitted to hospital. Concerns about adequate PPE and access to hospital care and treatment were identified.
21. The very high percentage of people with a DNACPR in place is of particular concern<sup>12</sup>. It is not clear how, by whom or whether after effective decision-specific capacity assessments such orders were signed.
22. The use of DNACPR decisions and the initiation of palliative/end of life care should be monitored to ensure that this population is not being disadvantaged.<sup>13</sup>
23. For adults living in supported accommodation the biggest impact has been a lack of alternative community provision that people can access outside of home. The shut-down of these provisions has meant that many people have had to stay at home with little or no community time.<sup>14</sup>
24. Some providers have been over cautious in their approach, there is a danger that a person under full and complete supervision/control would be confined to being at home because a provider has created a policy or practice which does not support safe community activity.

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<sup>10</sup> <https://www.nationalcareforum.org.uk/blog-posts/visiting-in-care-homes-where-now/>

<sup>11</sup> <http://www.bristol.ac.uk/media-library/sites/sps/leder/Summary%20of%20findings%2050%20LeDeR%20reveys%20of%20deaths%20related%20to%20COVID19.pdf>

<sup>12</sup> <http://www.bristol.ac.uk/media-library/sites/sps/leder/Summary%20of%20findings%2050%20LeDeR%20reveys%20of%20deaths%20related%20to%20COVID19.pdf>

<sup>13</sup> <https://www.amnesty.org.uk/care-homes-report>

<sup>14</sup> <https://www.basw.co.uk/media/news/2020/mar/voices-social-workers-through-basw-covid-19-survey-set-agenda-safety-and>

25. In our overarching statement on Human Rights, BASW identifies the pressures arising from the pandemic.<sup>15</sup>
26. People with a learning disability are being left behind because they cannot access social care and this cannot be allowed to continue<sup>16</sup>.
27. The importance of national guidelines to support Local Authorities and social workers when working with people with learning disabilities and their families during the pandemic cannot be underestimated. This includes information about how best to respond in terms of opportunities for social time, activities, contact and visits to reduce the impact of loneliness and isolation for those who are classed as clinically vulnerable.<sup>17</sup>

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<sup>15</sup> <https://www.basw.co.uk/media/news/2020/jun/upholding-human-rights-during-covid-19>

<sup>16</sup> [the Guardian](#)

<sup>17</sup> <https://www.basw.co.uk/media/news/2020/nov/basw-england-responds-latest-public-health-england-report-deaths-people>