

## **COVID-19 FAQ Older Peoples Care Home (Nursing) Visiting.**

### **Question**

A Registered Nurse Manager working in care home for older people phoned to say she wishes to let a family member of a resident who is at end of life stay overnight but is concerned about bending the rules as the policy is for relatives to stay a max of 1 hour for end of life.

### **Response**

Older people who live in care homes led by nurses are entitled to the same human rights as any citizen. If a care home is their permanent place of residence, it is their home. Article 8 of European Convention on Human Rights (ECHR) states *You have the right to live your life privately without government interference. The concept of private life also covers your right to develop your personal identity and to forge friendships and other relationships.*<sup>i</sup> Article 5 (ECHR) *provides that everyone has the right to liberty and security of person.*<sup>ii</sup>

As nurses we are also bound by The Nursing and Midwifery Council (NMC) Code which states nurses must,

*(1.3) avoid making assumptions and recognise diversity and individual choice*

*(1.5) respect and uphold people's human rights.*

*(4.3) keep to all relevant laws about mental capacity that apply in the country in which you are practising, and make sure that the rights and best interests of those who lack capacity are still at the centre of the decision-making process*

Additionally, as a nurse you must also practice within the law of countries in which you are working. You must also be aware of the guidance in the country in which you practice, links can be found at the base of this document

The RCN recognises that where a Care Home has a significant rise in cases of Covid it will be essential to manage the human rights alongside public health concerns. In consequence nurses are making or having input into a set of complex professional, ethical and clinical decisions related to visiting arrangements.

### **Assessment of risks of visiting**

There may be occasions when, in accordance with the code, a nurse decides the guidance is not in the best interests of an individual resident, perhaps at end of life or if the person is exhibiting distressed reactions. Any decision not to follow national or local guidance is a highly complex clinical, ethical and professional judgement which should include an individual dynamic risk assessment which takes into account the significant needs of residents, visitors and staff.

As nursing staff we must be able to articulate and document the reasons for making that judgement and engage with employers, families, nursing support staff and the wider care home community. This is particularly relevant for nurses working with

residents who do not have capacity or have fluctuating capacity to decide to receive visitors.

Where a resident has capacity, the nurse must provide them with the appropriate information and guidance in order that they can make a decision about visiting arrangements.

When making judgements about visiting the nurse is required to take into consideration the wishes, risks and benefits to the individual and to the wider care home community. The nurse will be balancing national and local guidance and the individual context of the care provision, as well as in compliance with obligations under the Equality Act<sup>iii</sup>, Human Rights Act<sup>iv</sup> and Equality and Human Rights Commissions<sup>v</sup>

We recommend a dynamic risk assessment approach.

### **Dynamic Risk Assessment**

A dynamic risk assessment is “The continuous process of identifying hazards, assessing risk, taking action to eliminate or reduce risk, monitoring and reviewing, in the rapidly changing circumstances”<sup>vi</sup>

Each care home should have guidance in place to assist nursing staff to undertake complex risks assessments. This must be informed by governmental and public health expertise<sup>viiiviiiix</sup>. Nurses must have the education and time to balance risks versus benefits. They must have available the necessary resources both human and material to enable safe visiting. Additionally, nurses should have the opportunity to discuss their assessment of risk with residents, families, peers and the wider multidisciplinary team. They must also have access to clinical supervision to discuss concerns and outcomes. Risk assessment should be undertaken in accordance with employers’ policies.

### **Clinical considerations**

What follows are the dimensions for clinical consideration, it provides a guide and is not exhaustive Each clinical decision must be clearly documented in line with the NMC Code<sup>xi</sup>

**The resident** – their mental capacity, clinical condition, sensory impairments, whether they are from an ethnic background with an elevated risk of contracting and becoming seriously ill as a result of COVID-19. This group includes Black British, Black Caribbean, Black African as well as people from Pakistani, Indian and Bangladeshi origin, Covid status, care needs including end of life care, cultural and religious beliefs, personal wishes and significance of visiting. The resident’s ability for concordance with visiting plan should also be assessed.

**The visitor** – their mental capacity, Covid status mobility and risk of Covid infection, i.e. long-term condition, age, pregnant, whether they are from an ethnic background with an elevated risk of contracting and becoming seriously ill as a result of COVID-19. This group includes Black British, Black Caribbean, Black African as well as

people from Pakistani, Indian and Bangladeshi origin, access to testing<sup>xii</sup>, PPE availability and concordance.

**The environment of care** – staffing numbers and ability to supervise, physical space and proximity to other residents. Access to handwashing. Whether the visiting space is hospitable including accessibility, warmth, seating, refreshments, hearing loops etc, this is particularly important if people are visiting outside. The risk of falls and trips if using barriers. Environmental cleanliness maintenance and assurance of routine and any additional cleaning required.

**The staff-** access to training, support, PPE and testing, higher risk ethnic groups, how confident they are about managing visiting.

**The other residents** – levels of infection, testing, concordance with visiting, levels of concerns, wishes of other families.

### **Finally**

The nurse and multidisciplinary team must have open and honest conversations with residents and their families and engage in defensible transparent decision making in partnership with those involved. There should be clear plans on how to mitigate risks and maximise the benefits of visiting.

### **Question**

If we have it in a dynamic risk assessment that states when the R rate is above 1 we will lock down then why are we questioned about Human Rights and breaches under Article 8?

### **Response**

A dynamic risk assessment is “The continuous process of identifying hazards, assessing risk, taking action to eliminate or reduce risk, monitoring and reviewing, in the rapidly changing circumstances” <sup>xiii</sup> It should be undertaken on an individual resident basis, the dynamic part means it is ongoing not a one off decision and changes as the situation changes.

In terms of human rights, older people who live in care homes led by nurses are entitled to the same human rights as any citizen. Article 8 of European Convention on Human Rights (ECHR) states *You have the right to live your life privately without government interference. The concept of private life also covers your right to develop your personal identity and to forge friendships and other relationships.*<sup>xiv</sup> Article 5 (ECHR) *provides that everyone has the right to liberty and security of person.*<sup>xv</sup>

Our role as nursing staff is to uphold people’s human rights in line with the NMC Code (1.5)<sup>xvi</sup> and there may be occasions, for example if someone is experiencing distressed reactions related to their dementia, that you judge visiting to be appropriate. The dynamic risk assessment help you justify that decision and systematically assess the risk. It will also help you document your decision and identify the people you have consulted with.

## **The RCN position is that**

Employers should have in place an individual dynamic risk assessment which enables and supports nurses to exercise their professional and legal obligations.

UK Governments should ensure professional nursing input into the production of national guidance that impacts on nursing obligations.

Employers must have policies in place to support dynamic risk assessment for individual residents.

Employers must ensure the resources are in place to deliver the necessary care and support identified in individual dynamic risk assessment. This would include the necessary staffing and infection control and prevention resources. If resources are not in place members have the duty to raise or escalate concerns. Nursing staff should feel able to raise concerns without detriment and should receive timely feedback on their concerns.

If your concerns remain unresolved, refer to [our raising concerns guidance](#) and speak to your manager. You can also call RCN Direct for advice on 0345 772 6100.

## **Question:**

What will happen if there is an outbreak of Covid where I work or if my employer or a member of the public makes a complaint about me because of a decision I made?

## **Response:**

If there is an outbreak of Covid and a resident or their family make a compensation claim as a result, it will only succeed if negligence can be shown. Provided that you have made decisions that an ordinarily competent practitioner in your role might make (for example, by following guidance documents and the principles set out above), then your actions will not be deemed negligent. Even if your actions are found to be negligent, your employer will have indemnity cover to pay the claim.

If you are reported to the NMC, again you will need to be able to justify how you utilised your professional judgement, drawing on the principles outlined in the answers above. In order to be able to justify your decision-making, you need to make good records about your reasons for making those choices. The NMC will take the

context of the difficult circumstances presented by the pandemic into account and will not penalise practitioners trying to exercise their judgement within the Code.

In both sets of circumstance, the records you keep explaining your reasons for your actions will be vital evidence. And remember that whatever happens, the RCN is here to support you with legal advice and representation.

### **Question**

I am really worried what will happen to me if I make the wrong decision about visiting and need help, what should I do?

### **Response**

Nurses must be supported to work in a psychologically safe manner. No one individual should be making decisions about visiting alone. Discussions should occur with managers, residents and families, multi-disciplinary colleagues, nursing support workers and local public health staff and must take into account national and local guidance.

We need nurses need to feel ‘psychologically safe’ they need to be able to raise concerns, ask for help, take risks and innovate and, where necessary, admit failures.<sup>xvii</sup> <sup>xviii</sup> This particularly important when making complex decisions. A key component of psychological safety is it is usually experienced at group level most people in a team tend to have the same perceptions of it, so if you feel unsupported at work your colleagues probably feel that as well. <sup>xix</sup>

We have guidance “Raising and escalating concerns” which can be accessed at <https://www.rcn.org.uk/professional-development/publications/rcn-raising-and-escalating-concerns-uk-pub-009425>

Nurses who are not feeling psychologically safe or who need advice should access support through RCN Direct on 0345 772 6100.

## Resources to support practice

### Current Government Guidance

Care Home Guidance <https://www.gov.scot/publications/coronavirus-covid-19-adult-care-homes-visiting-guidance/>

Care Home Guidance <https://gov.wales/visits-care-homes-guidance-providers>

Guidance for healthcare professionals, carers and care homes  
<https://www.publichealth.hscni.net/covid-19-coronavirus/guidance-hsc-staff-healthcare-workers-and-care-providers/guidance-healthcare>

DHSC Visiting in Care Homes <https://www.gov.uk/government/publications/visiting-care-homes-during-coronavirus/update-on-policies-for-visiting-arrangements-in-care-homes>

### Additional Resources

Equality Act 2010 <https://www.legislation.gov.uk/ukpga/2010/15/contents>

Raising and escalating concerns: a guide for nurses, nursing associates, students and healthcare support workers <https://www.rcn.org.uk/professional-development/publications/rcn-raising-and-escalating-concerns-uk-pub-009425>

Human Rights Act 1998

<https://www.legislation.gov.uk/ukpga/1998/42/contents> Council of Europe:

European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 December 2016, available at: <https://www.refworld.org/docid/5a016ebe4.html> [accessed 30 October 2020] Council of Europe:

European Court of Human Rights, *Guide on Article 5 of the European Convention on Human Rights - Right to respect for private and family life*, 31 December 2016, available at: <https://www.refworld.org/docid/5a016ebe4.html> [accessed 30 October 2020]

Age UK Visiting in Care Homes <https://www.ageuk.org.uk/discover/2020/09/visiting-in-care-homes-where-now/>

Amnesty International Care Homes Report <https://www.amnesty.org.uk/care-homes-report>

RCN Dementia Clinical Topic <https://www.rcn.org.uk/clinical-topics/dementia/professional-resources>

Rapid Learning Initiative into the Transmission of Covid-19 into and within Care Homes in Northern Ireland <https://www.health-ni.gov.uk/publications/rli-final-report>

The Triangle of Care Carers Included: A Guide to Best Practice for Dementia Care England/Wales <https://carers.org/downloads/resources-pdfs/triangle-of-care-england/the-triangle-of-care-dementia-england.pdf> <https://carers.org/resources/all-resources/69-the-triangle-of-care-carers> included-a-guide-to-best-practice-for-dementia-care-in-wales

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<sup>i</sup> Council of Europe: European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 December 2016, available at: <https://www.refworld.org/docid/5a016ebe4.html> [accessed 30 October 2020]

<sup>ii</sup> Council of Europe: European Court of Human Rights, *Guide on Article 5 of the European Convention on Human Rights - Right to respect for private and family life*, 31 December 2016, available at: <https://www.refworld.org/docid/5a016ebe4.html> [accessed 30 October 2020]

<sup>iii</sup> <https://www.legislation.gov.uk/ukpga/2010/15/contents>

<sup>iv</sup> <https://www.legislation.gov.uk/ukpga/1998/42/contents>

<sup>v</sup> <https://www.equalityhumanrights.com/en/legal-responses/parliamentary-briefings>

<sup>vi</sup> <https://esa.act.gov.au/sites/default/files/wp-content/uploads/dynamic-risk-assessment-overview.pdf>

<sup>vii</sup> <https://www.gov.scot/publications/coronavirus-covid-19-adult-care-homes-visiting-guidance/>

<sup>viii</sup> <https://www.gov.uk/government/publications/visiting-care-homes-during-coronavirus/update-on-policies-for-visiting-arrangements-in-care-homes>

<sup>ix</sup> <https://gov.wales/visits-care-homes-guidance-providers>

<sup>x</sup> <https://www.health-ni.gov.uk/news/visiting-guidance-issued-hospitals-and-care-homes>

<sup>xi</sup> <https://www.nmc.org.uk/standards/code/read-the-code-online/#fourth>

<sup>xii</sup> RCN Covid FAQ's <https://www.rcn.org.uk/get-help/rcn-advice/covid-19>

<sup>xiii</sup> <https://esa.act.gov.au/sites/default/files/wp-content/uploads/dynamic-risk-assessment-overview.pdf>

<sup>xiv</sup> Council of Europe: European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 December 2016, available at: <https://www.refworld.org/docid/5a016ebe4.html> [accessed 30 October 2020]

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<sup>xv</sup> Council of Europe: European Court of Human Rights, *Guide on Article 5 of the European Convention on Human Rights - Right to respect for private and family life*, 31 December 2016, available at: <https://www.refworld.org/docid/5a016ebe4.html> [accessed 30 October 2020]

<sup>xvi</sup> NMC Code <https://www.nmc.org.uk/standards/code/read-the-code-online/>

<sup>xvii</sup> <https://www.rcn.org.uk/magazines/bulletin/2020/march/psychological-safety>

<sup>xviii</sup> <https://www.rcn.org.uk/news-and-events/blogs/eileen-mckenna-psychological-safety-7-jan-2020>

<sup>xix</sup> <https://www.rcn.org.uk/professional-development/publications/rcn-raising-and-escalating-concerns-uk-pub-009425>