

Response ID ANON-GXRE-W229-A

Submitted to Anne's Law: proposals for adults living in care homes to maintain family and friendship connections
Submitted on 2021-11-04 14:17:15

Questions Part 1

1 Do you agree with the overall aim that people living in adult care homes have the right to see and spend time with those who are important to them in order to support their health and wellbeing?

Yes

Please explain your answer in the text box below:

Those who deliver care and support to individuals in a residential and nursing home fully recognise the importance of family, social and community connections, and meaningful activity for the individual health and wellbeing of residents. Before the pandemic the participation of family members in the care and support of residents was normal and a familiar character of care home life. For many people, having contact with family and friends is a critical part of their health and wellbeing and this should always be encouraged and enabled but the individual choice and autonomy of the resident must be respected.

Scottish Care agrees that families and friends play an essential role in the health and wellbeing of people whilst also recognising that there are many for whom there are no family and friends able to visit and therefore other activities and supports are fundamental to the wellbeing of those individuals.

Scottish Care supports the overall aim for people living in adult care homes to see and spend time with whoever they choose to support their health and wellbeing. However, we would point out that this question isn't the same as what is proposed in the consultation document as the language says that visitors would have the 'same rights as staff' – this is a different question altogether. Families do not and should not have the same right of access as staff do as they do not share the same responsibility and legal duties of care to all residents which staff do. Care home managers have a legal responsibility to safeguard all residents and staff and allowing access without limitation risks putting them in breach of both adult protection and health and safety legislation.

2 What do you think should be the main aims of Anne's Law?

Please explain your answer in the text box below:

The primary aim of Anne's Law should be on protecting resident's rights, wherein the individual is enabled to maintain contact with a visitor of their own choosing. The agency of the resident in receipt of care and support should be supported at every point, with consideration in mind that while seeing and having access to visitors may be incredibly important for the resident's wellbeing, the ultimate choice must always be theirs. The rights of the resident must be upheld and protected, as well as the rights of all the other residents so that everyone can be kept safe.

3 Do you think this should be a right for residents or for the visitor (s)?

For resident

Please explain your answer in the text box below:

The rights should be a right for the resident.

Questions Part 2

4 How can the rights of residents be balanced against the rights of other people in the setting for example other residents, staff, visiting professionals?

Please explain your answer in the text box below:

This will be a critical balance. Individual rights carry with them responsibility for action and an appreciation that these are rights exercised and fulfilled in relation to others. In the care home setting, there are multiple actors who exercise human rights, including other residents, staff and other relatives and friends.

When restrictions are introduced, they are put in place with the one primary aim – to keep people safe. The safety and wellbeing of all residents and staff must remain the primary objective during an infectious disease outbreak. This requires to be weighed against the importance of relationship and maintaining contact for individual resident wellbeing.

A care home is an environment where individuals live alongside and in community with other people. Such congregated or group living is inevitably different from living on one's own or with family. Part of that difference is that the views and perspectives of one's fellow residents have a critical role to play in decisions which are taken. A care home is not just the home of one resident but rather is the home of a multiple group of individuals. It is here where there is both a challenge and an opportunity.

In the current regulatory framework, the care home manager as the registered manager has the legal responsibility not only to keep residents safe but to abide by other legislation such as health and safety and adult protection requirements. Scottish Care believes that whilst the right of visiting your

relative/friend should be the starting point (including during a controlled outbreak) that the care home manager must be empowered to make decisions – often in an emergency situation – which would result in limiting or stopping visiting.

Scottish Care believes that in situations where there may be divergence of views amongst residents and relatives that the adoption of human-rights based approaches such as the FAIR model offer a positive, right-based approach to address individual concerns in a collective and shared living environment.

5 What do you see as the main benefits, challenges and risks of the proposal to develop legislation to support people living in adult care homes to have the right to see and spend time with those who are important to them?

Benefits - Please explain your answer in the text box below:

The main benefits are to the health and wellbeing of individual residents and their families and friends.

Challenges - Please explain your answer in the text box below:

As noted above there are potential challenges in a context where relatives disagree with for instance the volume or nature of access especially during an outbreak. The very nature of group and collective living means that individual choice can never be absolute when considered over and against another in a shared environment. It is the role of the manager and staff to often manage conflicting expectations and demands and they must be supported to do so in a manner that does not cause distress or victimisation.

On a practical level there would be very real operational and environmental challenges with a completely open right to access and visit, for instance if there were no protected times in place for health and wellbeing, for example during mealtimes or clinical activities. It might be argued that family members would always be sensitive to the needs of the care home and the staff, but regrettably this is not always the case and once a 'right' is legislated for we have to consider all potential circumstances.

Risks - Please explain your answer in the text box below:

In the implementation of any new legal requirement, it will be important that a previously person-centred and relational dynamic between the resident, their family and care home staff does not turn into one which is transactional and contractual in nature and one focussed on compliance.

The management of risk is at the heart of any potential change in the law. We believe that the right of access should be reasonable and proportionate at all times, reflective of the risks to the individual resident, to other residents and staff.

6 Should the proposals apply only to people who live in an adult care home (residential and nursing) registered with the Care Inspectorate?

No

Please explain your answer in the text box below:

In order to allow for equal implementation and access to residents of adult care homes, the proposals should apply across all areas and settings. This raises many issues around where to draw the boundary as the law would need to create lots of caveats around what is and is not included under visitation rights. For example, forensic, secure accommodations, intensive psychiatric care units etc.

Questions Part 3

7 Please provide any further comments on the proposals

Please explain your answer in the text box below:

We would want any new law to include responsibilities for relatives and those who visit to clearly outline principles of proportionality (as residents share their home with others) and to also focus on clear communication requirements both on the provider and on the family member.

Ultimately, we all must learn the painful lessons of the pandemic. The protection given by care homes in the early days of the pandemic by closing down as had previously been the regular practice during norovirus and influenza outbreaks offered real protection and undoubtedly saved lives not least because of the knowledge we now have about asymptomatic spread of coronavirus.

However, it is also undoubtedly the case that considerable harm was caused by the length of time that exclusions and restrictions were required to continue. Any new legislation should seek on the one hand to ensure that with appropriate protections and proportionality visiting by family members during a managed outbreak can continue whilst at the same time being sensitive to the equally valid needs and views of other residents, staff, and families.

This is a hard balance to achieve and sometimes legislation is not the best vehicle to achieve a restoration of human relationships. We all earnestly hope that those who care for their loved ones as family and friends, together with those who care and support residents as professionals can work together into the future to ensure enhanced care, support, and wellbeing for all involved.

About you

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:
Scottish Care

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Please enter comments here.:

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Please enter comments here.: