**Information on visiting rights in care homes**

**1. What is this information about?**

This document gives information about certain regulations that protect care home residents and their partners, family and friends who visit them, as well as issues for providers to consider about meeting the needs of those who use their services.

**2. Why is it important that residents in care homes should be able to receive visitors if they want to?**

Care homes are people’s homes, and they should be able to welcome family and friends as they did before they became a resident.

Our 2016 report, *Better care in my hands*, talks of the importance of people’s family and loved ones being able to help plan their care and support as much as they want them to. This sort of involvement is an essential characteristic of person-centred care. Clearly, such involvement is better enabled by family, friends and carers being able to visit relatives in their home, talk to the staff who care for them, and give their feedback, positive and negative, to the provider.

**3. What rights does a resident have to be visited by a relative or friend?**

Care home providers should enable a resident to see their family and friends if the resident agrees. Staff should respect residents’ relationships and give them as much privacy as possible. If they do not do this, it may mean that the care provider is in breach of a number of Health and Social Care Act 2008 regulations, against which CQC can take action (see 12 and 14 below).

If a service fully or partly funded by the local authority or NHS stops a resident from receiving visitors, this may be a breach of the resident’s rights under Article 8 of the European Convention on Human Rights, incorporated into the Human Rights Act 1998 (this is everyone’s right to respect for their private and family life, home and correspondence). However, rights under Article 8 are not absolute – they need to be balanced against other rights and the rights of other people. This means there may be a small number of very specific circumstances where care providers can restrict, or even refuse visitors (see 6 and 7 below).

**4. What if the resident lacks the mental capacity to make decisions about who visits them?**

Visits should be enabled, unless there are compelling reasons to say they are not in the person’s best interest. These reasons should be agreed through a Mental Capacity Act decision making process. More information about the Mental Capacity Act can be found on our website at [www.cqc.org.uk/mca](http://www.cqc.org.uk/mca)

**5. What rights does a visitor have if they have a lasting power of attorney?**

If the resident does not have the capacity to make decisions about their care and treatment themselves, then someone who has a lasting power of attorney**[[1]](#footnote-1)** (the attorney) can decide this on their behalf. When they do this, attorneys should decide what is in the person’s best interests, considering their past and present wishes and feelings, beliefs and values. The care provider should therefore allow the attorney to visit the service to consult with the person and anyone involved in caring for them.

Attorneys should also be consulted by any professionals making best interests decisions about the person under the Mental Capacity Act.

**6. What if the care provider thinks the visitor poses a risk to the resident’s safety?**

In the first instance the provider should talk to the visitor, who may not realise that what they are doing poses a risk. If this continues the provider would need to assess the level of risk and the impact on the person, and in extreme cases refer the matter to the local authority’s safeguarding team to provide oversight of the situation and to consider investigating the case under their safeguarding procedures. If the visitor has a lasting power of attorney then, again in extreme cases, the care provider can raise a complaint with the Office of the Public Guardian.

**7. What if the care provider believes that the visitor poses a risk to other residents, staff or the running of the service?**

Seeing a loved one in a care home can be distressing, especially in the beginning or as they become more dependent because of frailty, illness or decreasing capacity. Bearing this in mind, if issues or conflict develops the care provider should first meet with the visitor and try to resolve them. Conflict between the provider and a family member or friend may be detrimental to the wellbeing of the resident. If the visitor has concerns about a resident’s care, these should be acknowledged, understood and acted upon.

Care homes have a duty to protect people using their services. If issues cannot be resolved, the provider may consider placing some conditions that restrict the visitor’s ability to enter the premises if, for example, they believe (having sought advice from others, like the safeguarding team) that they pose a risk to other people using the service and staff, or to the running of the service. For example, they could limit visits to take place in the resident’s room only. Any conditions should be proportionate to the risks to staff or other people and kept under review. The provider should seek advice from the local authority’s Deprivation of Liberties team if the resident lacks capacity to make decisions.

**8. Can a care provider remove someone’s lasting power of attorney?**

Powers given under a lasting power of attorney can only be removed by the Court of Protection (COP). If the care provider is concerned about the conduct of the attorney, they can raise a complaint to COP. If the COP decides that the attorney is not acting in the person’s best interests, they can remove their lasting power of attorney.

If the attorney and care provider cannot agree about what is in the person’s best interests, they could apply to the COP to determine the issue.

**9. What rights does someone have if they want to complain about a care provider?**

Regulations require that all care providers must have an effective and accessible system for identifying, receiving, handling and responding to complaints from people using the service or people acting on their behalf. All complaints must be investigated thoroughly and any necessary action taken where failures have been identified. CQC asks care homes how they listen and learn from people’s complaints.

**10. What confidence should people have that making a complaint will not negatively affect them or the care and treatment of the resident?**

The guidance about the regulations says “People must be able to make a complaint to any member of staff, either verbally or in writing. Complainants must not be discriminated against or victimised. In particular, people's care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf.” As part of our inspection and monitoring we check that people feel comfortable sharing concerns and complaints, and we take action if we find that providers are in breach of the regulations (see 14 below).

**11. If somebody has a concern about a care provider how can they report it?**

If somebody thinks that a crime has been committed or someone is in danger, they should contact the police.

Otherwise, they should contact the care home provider. All health and social care service providers must have a procedure for dealing with feedback and complaints that anybody can ask to see (see 9 above). This will explain how to make a complaint. People can also complain to their council if it funds their care, or their clinical commissioning group (CCG) if it funds their NHS continuing care. If they are unhappy with their response from the provider, council or CCG, or the way their complaint has been dealt with, they can ask the Local Government Ombudsman to get involved. They can be contacted at 0300 061 0614 or through their website at [www.lgo.org.uk](http://www.lgo.org.uk). Also go to our website for more information about support in making a complaint – [www.cqc.org.uk/content/complain-about-service-or-provider](http://www.cqc.org.uk/content/complain-about-service-or-provider)

People can also contact CQC about concerns, including single issues, about any care service, including where they think they are not following the regulations in this document. Their information directs us in deciding when, where and what to inspect. This helps us prevent poor care and abuse happening to others in the future (see 14 below). However, CQC cannot make complaints for people or take them up on somebody’s behalf because we do not have powers to investigate or resolve them. The only exception to this is for people whose rights are restricted under the Mental Health Act.

*How to contact CQC:*

Telephone our National Customer Service Centre in Newcastle: 03000 616161

Or write to us:
CQC National Customer Service Centre
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

Or visit our website: www.cqc.org.uk/share-your-experience

**12. What guidance on the regulations is relevant to this issue (Health and Social Care Act 2008 [Regulated Activities] Regulations 2014)?**

* Regulation 9(3)(b): “When planning how to meet a person's preferences, providers should take into account, and make provision for, any impact this may have on other people using the service.”
* Regulation 9(3)(e): “People using the service and/or those lawfully acting on their behalf must be given opportunities to manage as much of their care and treatment as they wish and are able to, and should be actively encouraged to do so.”
* Regulation 9(3)(f): “Providers must actively seek the views of people who use their service and those lawfully acting on their behalf, about how care and treatment meets their needs. Providers must be able to demonstrate that they took action in response to any feedback.”
* Regulation 10(2)(a): “People’s relationships with their visitors, carer, friends, family or relevant other persons should be respected and privacy maintained as far as reasonably practicable during visits.”
* 10(2)(b): “People must be supported to maintain relationships that are important to them while they are receiving care and treatment.”
* Regulation 16(1): “People must be able to make a complaint to any member of staff, either verbally or in writing. Complainants must not be discriminated against or victimised. In particular, people's care and treatment must not be affected if they make a complaint, or if somebody complains on their behalf.”

**13. What questions does CQC ask about this issue when inspecting services and what does CQC expect to see?**

The questions we ask:

* How are people supported to maintain good health, have access to healthcare services and receive ongoing healthcare support?
* How is people’s privacy and dignity respected and promoted? Are people’s relatives and friends able to visit without being unnecessarily restricted?
* How do people receive personalised care that is responsive to their needs? How are people encouraged and supported to develop and maintain relationships with people that matter to them and avoid social isolation?
* How does the service routinely listen and learn from people’s experiences, concerns and complaints?

We expect to see that:

* Where people do not have the capacity to make decisions about their care, treatment and support, their friends and family are involved, where appropriate.
* Staff are proactive, and make sure that people are able to keep relationships that matter to them, such as family, community and other social links.
* Concerns and complaints are always taken seriously, explored thoroughly and responded to in good time.

**14. What action can CQC take if a provider is not meeting these regulations?**

If our inspectors have any concerns when following these key lines of enquiry, they can judge whether the regulations have been breached, and apply our enforcement powers as appropriate. We may issue a Notice to the provider that sets out what improvements they must make and by when. Or we can change the provider's registration to limit what they are allowed to do for a certain period, and as a last resort we can close the service.

Before a service starts to operate, we have to refuse to register a provider if they cannot satisfy us that they can and will continue to comply with these regulations.

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1. A lasting power of attorney (LPA) is a legal document that lets someone appoint one or more people (‘attorneys’) to help them make decisions or to make decisions on their behalf. There are two types of LPA: health and welfare (for decisions about medical care, moving into a care home, etc) and property and financial affairs (for decisions about money and property, etc). [↑](#footnote-ref-1)