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John's Campaign – Fighting for the Rights of Care Home Residents

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John's Campaign has been fighting for changes to the way our care homes operate since 2014. They believe that carers should not just be allowed in care settings – they should be welcomed, for the wellbeing of residents.

On September 9th, John's Campaign launched a legal challenge to The Government regarding its guidance on care home visits during and after the coronavirus lockdown. The Government has failed to respond to John's Campaign's [letter before action](#) within the 14 day allocated period citing that they are "too 'busy' dealing with coronavirus" to review care home visits. Government solicitors have now promised to respond by September 30th.

Jennifer Lee, Co-Head of the Court of Protection team at Pump Court Chambers, explains for Age Space what the challenge by John's Campaign means, and the legal reasoning behind it.



John's Campaign – the not-for-profit organisation which advocates for people with dementia and their family carers – is on the verge of commencing legal action against the Government in respect of the legality of its guidance^[1] to care homes on family visits, published on 22 July 2020 (revised on 31 July).

What is the Government's Guidance on Care Home Visits?

The guidance seeks to provide guidance to care homes on visits by family members since the ending of lockdown. Unfortunately, it has become abundantly clear that the guidance, which lacks clarity, has caused many care homes to implement blanket bans on visits with no consideration for the individual needs of any particular resident.

The guidance states that it is the responsibility of care homes and local authorities to make their own decisions about visits by family members. Many care homes across the country have therefore simply made the decision to ban all visits from family members, fearing legal and financial liability. The guidance places no requirement on care homes to carry out individualised risk and needs assessments in respect of their residents.

Since the guidance was published, harrowing stories have emerged of families who are unable to visit their loved ones in care homes, or have visits which are so restricted that they cause more harm than good. For most, it is only once the resident is dying that family members are, finally, allowed to visit. This is despite the easing of lockdown restrictions generally, which has enabled the rest of the population to visit pubs and restaurants, go for a haircut or to the park, and meet up with family and friends.

**THE DAMAGE BEING DONE
IN THE NAME OF SAFETY**



After 6 months parted from her family, 82-year-old COVID survivor Margarita 'wants to die'.

In care homes, hospital wards, mental health units and rehabilitation centres, people are separated from those they love and need through fear of infection. For more than half a year, husbands and wives, committed partners, parents and children, have been kept apart. People are literally dying of heartbreak.

In the name of safety, terrible damage is being inflicted on tens of thousands of people. This damage is avoidable.

Closest family are essential. They make life worth living and must be treated as key workers, obeying the same rules as staff.

Only the government can make this happen. John's Campaign is asking for a judicial review of the government guidelines which have ignored the human rights and choices of Margarita and thousands of others.

End this enforced separation, welcome closest family as key workers.

Support our campaign:
crowdjustice.com/case/government-guidance-has-failed-care-homes

johnscampaign.org.uk



for the right to stay with people with dementia
for the right of people with dementia to be supported by their family carers

What is John's Campaign doing to Challenge the Government?

John's Campaign has now sent a letter before action (a precursor to commencing legal proceedings) to the Health Secretary of State for Health and Social Care, Matt Hancock, to challenge the legality of the guidance.

The organisation states that people with dementia have suffered disproportionately from the isolating effects of the lack of family visits throughout and since lockdown. 70% of residents in care homes suffer from dementia, which is a disability for the purposes of the Equality Act 2010.

They argue that the guidance to care homes is unlawful because it breaches the Equality Act and the Human Rights Act 1998 (which requires the government to have regard to the European Convention on Human Rights). In particular, they state that the guidance breaches these provisions:

- Section 19 of the Equality Act – this prohibits indirect discrimination and requires care homes to apply different rules for different residents depending on their personal circumstances.
- Article 14 of the European Convention on Human Rights – this prevents people being treated similarly, without justification, when they are in relevantly different situations.
- Article 8 of the European Convention on Human Rights – this entitles residents and their relatives to a private and family life
- Article 2 of the European Convention on Human Rights – this protects residents’ right to life
- Article 3 of the European Convention on Human Rights – this protects residents’ right to be free from cruel, inhuman and degrading treatment.

They further argue that family members of people with dementia, who provide crucial practical and emotional support, essential to the health and wellbeing of their relatives in care homes, should be designated “key workers” with the same access to visit their family members in care homes as paid workers.

John's Campaign has urged the government to urgently amend their guidance, or publish new guidance, to ensure that the rights of people with dementia and their families do not continue to be undermined. The guidance should underscore the requirement for individualised risk and needs assessments, which allows for differentiated decisions to be taken to suit each resident.

John's Campaign is crowdsourcing their legal action [\[2\]](#). Their letter before action was served on the Health Secretary on 9 September 2020. The government has 14 days to respond. If a substantive response is not received, a claim for judicial review of the legality of the guidance will be issued in the High Court.

John's Campaign – what you can do to support relatives in care homes

Until the Government responds to John's Campaign, the guidance given to Care Homes remains in place. This leaves the decisions regarding family visits to care homes down to each individual home/provider. The circumstances are so difficult, but you may find these ideas helpful:

- Attempt to establish a positive dialogue with the care home
- You may be able to suggest visits in the open, wearing PPE
- Better use of technology to facilitate at the very least phone calls/zoom
- Propose that a single family member would become the sole visitor who would adhere to care home guidance for all staff/suppliers regarding PPE etc

This blog was written by Jennifer Lee, co-head of Pump Court Chambers' Court of Protection Team [\[3\]](#), which specialises in financial and welfare matters for those who lack capacity, including issues relating to contact and deprivation of liberty. This blog does not constitute legal advice.

Citations:

[1]

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

[2]

<https://www.crowdjustice.com/case/government-guidance-has-failed-care-homes/>

[3]

<https://www.pumpcourtchambers.com/legal-service/court-of-protection/>

Find out more about John's Campaign

You can read more about John's Campaign and how you can support it on the [John's Campaign website](#).