**Question and answer session from joint online stakeholder event with Social Care Wales, 16 December 2020**

**Information provided by:**

**Care Inspectorate Wales (CIW)**

**Social Care Wales (SCW)**

**EHRC Wales (EHRC)**

* Is the Social Care Wales “Time for You” peer network for domiciliary support managers available for managers and for Responsible Individuals (RIs) in care homes too?

***[SCW]*** The Cwtch initiative which was aimed at care home managers and was headed by Public Health Wales, is currently being reviewed and we are hoping for news on future work. ‘Time for You’ by SCW was with domiciliary care services. However, if you would like to discuss current and future plans, please email cathryn.thomas@socialcare.wales

* How can we access the bite-sized sessions for end of life care?

***[SCW]*** You can access resources [via this link](https://socialcare.wales/service-improvement/supporting-end-of-life-care-in-social-care-settings-during-covid-19). Regarding end of life and dementia care, a recording of the session held by SCW is being prepared. If you would like to have the link sent to you, email iwqueries@socialcare.wales. SCW are also developing guidance on carrying out supervision where staff have been affected by increased numbers of client deaths.

* There has been an understandable focus on older people in care homes, but the issues raised for children in relation to rights, access to advocacy, access to having a voice in children looked after (CLA) review processes, contact with birth family etc, have been extremely complex and pretty neglected as an area of concern. Thoughts on human rights and young people?

***[EHRC]*** We have been concerned that there has been significant impact on children and young people during the pandemic and response to it. We raised these concerns in our [response to the Senedd Committee](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fbusiness.senedd.wales%2Fdocuments%2Fs103026%2FCYPE%2520COV%2520126%2520-%2520Equality%2520and%2520Human%2520Rights%2520Commission%252016%2520June%25202020%2520Published%25203%2520July%25202020.pdf&data=04%7C01%7Cvicky.poole%40gov.wales%7C2c0d75b3f64f4367ba7c08d8a5c87365%7Ca2cc36c592804ae78887d06dab89216b%7C0%7C0%7C637441627674395512%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=B4oMJLP2TJQ7Q4cL8fpQfZj2e2a1mwnIPTacVMTgLTI%3D&reserved=0) and we are part of the Children’s Rights Monitoring Group, alongside the Children’s Commissioner for Wales and others. The same issues as those in our social care briefing also affect children and young people, although there is sometimes a different balance to be found.

As a National Human Rights Institution, we have a remit to promote and monitor human rights, including the monitoring of the UK and Welsh Government’s performance against its international human rights obligations and reporting that to the United Nations. We recently published and submitted a [report to the UN on Children’s Rights in Great Britain](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsites%2Fdefault%2Ffiles%2Fchildrens_rights_in_great_britain_0.pdf&data=04%7C01%7Cvicky.poole%40gov.wales%7C2c0d75b3f64f4367ba7c08d8a5c87365%7Ca2cc36c592804ae78887d06dab89216b%7C0%7C0%7C637441627674395512%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=WUFZfPmNhcHxQdREWG1XHV%2FkZSlQp3WKVGlMYnEBjaw%3D&reserved=0) and funded Children in Wales and the Wales UNCRC Monitoring Group to write a report on [children’s rights in Wales](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.childreninwales.org.uk%2Fwp-content%2Fuploads%2F2020%2F12%2FCIW-EHRC-Report-English.pdf&data=04%7C01%7Cvicky.poole%40gov.wales%7C2c0d75b3f64f4367ba7c08d8a5c87365%7Ca2cc36c592804ae78887d06dab89216b%7C0%7C0%7C637441627674405463%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=RRhSPqqF%2B43CU0ihwqZHLOplhjOHrLpC3DjWv%2BG6Au0%3D&reserved=0) as part of the reporting to the UN that may be of interest.

* Visiting: We have made a decision that we cannot implement Lateral Flow Testing (LFT) as we are unable to meet the conditions. Will we be criticised for not doing this as we are enabling visiting through other means?

***[CIW]*** The LFT is one enabler to facilitate visitors to people living in care homes. If you are able to support this in other ways and have documented your risk assessment that led to this decision, we (CIW) would not be critical of what is defensible decision making. We would hope you've discussed this with people living in the care homes and their families.

* We enjoyed the presentation from EHRC. Do you run regular webinars?

***[EHRC]*** Thank you for the positive feedback. We don’t regularly broadcast webinars but we do run events on issues we are working on. We have learnt to adapt and work differently during the pandemic, and we will consider how we can hold and host events virtually to support greater attendance and ease of access in the future. If you let us know what issues may be useful, we can consider whether we can prepare one. Any general webinars will be shared. We ran an event on 1st October 2020 celebrating 10 years of the Equality Act 2010 which can be viewed [here](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.legalnewswales.com%2Ffeatures%2Fcelebrating-10-years-of-the-equality-act-2010-in-wales%2F&data=04%7C01%7Cvicky.poole%40gov.wales%7C2c0d75b3f64f4367ba7c08d8a5c87365%7Ca2cc36c592804ae78887d06dab89216b%7C0%7C0%7C637441627674405463%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=7s7injSEez732A8f9mLLPINmtzLEjBrrpZYYP1HLKCo%3D&reserved=0).

* How can we expect RIs/managers to be less risk adverse when all liability remains with them for decisions made regarding a person’s care and their wellbeing? I cannot envisage other professionals involved in that person’s care accepting any of the liability regardless of how well decisions are evidenced.

***[CIW]*** Whilst RIs are responsible for decisions made regarding a person's care, these should not be made in isolation. The person, their representative and others involved in their care such as social workers should be involved when important decisions are being made.

* Article 5 Right to Liberty. We have young adults with learning disabilities, all fit and well young men, who want to go home to families at Christmas. The home is in a COVID-19 incident due to end on 28th December. Last positive test was 30th November. Some of them had positive tests. They are prevented by the 28-day rule from leaving to visit with families. However, had they been members of staff they would have had to isolate for 10 days and then could resume normal life including being back at work. This is causing extreme anxiety for their families and the young people themselves. Is the 28-day rule a breach of their rights?

***[EHRC]*** You hopefully will now have seen the Welsh Government’s [statement](https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fgov.wales%2Fwritten-statement-care-homes-visiting-family-and-friends-christmas&data=04%7C01%7Cvicky.poole%40gov.wales%7C2c0d75b3f64f4367ba7c08d8a5c87365%7Ca2cc36c592804ae78887d06dab89216b%7C0%7C0%7C637441627674405463%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=SWtuW8RTgs6%2Bgf5XehyIRRqvAzNVa7tXj3eD5ufAixo%3D&reserved=0) on Christmas visiting. This clarifies that the provider has to make a decision about whether steps can be taken to mitigate the risks of a visit and that decision should be informed by a dynamic risk assessment, which upholds rights and choice and involves the care home provider, the care home resident and their family. The 28-day rule is designed to manage the risk of infection; it therefore may be a justified interference with Article 5 right to liberty or Article 8 right to family life. I would suggest that you consider a risk assessment and contact Public Health Wales for advice about whether or not steps can be taken to mitigate the risk in a different way if possible. However, given the high level of infection risk, it may be that the Article 2 right to life justifies the continued restriction.

* Is the 28-day closure just an arbitrary number? If one person tests positive, surely regular re-testing is needed then followed by a 10-14 day period of all negative results?

Guidance in relation to home closure and testing has changed and is available [here](https://phw.nhs.wales/topics/latest-information-on-novel-coronavirus-covid-19/information-for-health-and-social-care/gui-001-covid-19-in-residential-care-settings/).

* What measures are/will be in place around best interest decisions for service users who lack capacity for the COVID-19 Jab? Given current delays in DoLS and BI assessments being conducted.

***[EHRC]*** Public Health Wales have clear advice around the vaccination and local authorities should be prepared to enable to best interest decision making process. You should contact them early if you have concerns about delays and being ready when you are contacted about the vaccination. Public Health Wales and Welsh Government have also published information for parents/relatives who may have questions about the vaccination.

* What lobbying is being done at a national level for care home teams and service users to receive COVID-19 vaccines as soon as possible?

Welsh Government is working on a planned roll-out of the vaccination and people living and working in care homes are in the priority groups for this.

* Lateral Flow Testing is deemed to be only 50% effective. By allowing visitors to be tested and visit families there is a good possibility that residents/staff might get infected, notwithstanding the use of PPE. By withholding the facility of LFT, would I be denying someone's human rights or protecting others from harm?

***[EHRC]*** This is a question of balance of rights and considering the risk of infection (and linked to Article 2 steps to protect right to life) vs the Article 5 right to liberty and Article 8 right to family life. It is important to weigh the different risks and to consider the impact before making a final decision. Public Health Wales and Welsh Government can and have provided advice about the reliability of testing and additional safety measures. Our briefing may help you to consider the difficulties of not allowing visiting when you consider that balancing of rights decision.