



Law Society
of Scotland

Consultation Response

Anne's Law: proposals for adults living in care homes to maintain family and friendship connections

November 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and respond to the Scottish Government consultation: *Anne's Law: proposals for adults living in care homes to maintain family and friendship connections*.¹ We have the following comments to put forward for consideration.

¹ <https://consult.gov.scot/pandemic-response/annes-law-legislation/>

Consultation Questions

Question 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?

People living in adult care homes should be able to exercise their human rights in accordance with national and international law to the same extent as those who do not live in adult care homes. This includes their right to family and private life (Article 8 of the European Convention on Human Rights), as well as relevant rights under the UN Convention on the Rights of Persons with Disabilities where the adult meets the definition of disability provided under that instrument.

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

As above, adults living in care homes already enjoy rights to family and private life under Article 8 ECHR. We do not believe that it is necessary to create a new right in legislation. What is required is effective protection for existing human rights in adult care home settings, to meet the aim of ensuring residents in care homes can spend time with those who are important to them in order to support their health and wellbeing.

We recognise that the rights impacted are likely to be qualified, not absolute and their exercise needs to be balanced with the wider interests of public safety and the protection of individual and community health. Restrictions on qualified rights require to be necessary to achieve a legitimate aim, and proportionate to that aim. This is consistent with the consultation proposals of considering the need to protect residents, staff and the wider public from the risk of serious infection (para 15 of the consultation document) and of allowing an individualised approach where possible (para 16 of the consultation document).

We would suggest that the aim of Anne's Law should be to allow adults living in care homes to effectively claim their existing rights, and to ensure that those rights are restricted only in exceptional circumstances and in a way that is proportionate and non-discriminatory in accordance with national and international human rights law.

Consideration should also be given to mechanisms to ensure effective protection of the human rights of adults living in care homes in all situations. There are many situations in which the rights of adults in care homes may be engaged and potentially infringed and these have been demonstrated during the course of the pandemic, for example where restrictions have been placed on adults leaving care homes to engage with their families and communities. Any new legislation should recognise and address wider human rights considerations.

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

The right to family and private life under Article 8 ECHR applies to both residents and their visitors.

As above, Article 8 rights are qualified rights. A visitor's right to see a resident should be subject to the normal requirement that the resident agrees to the visit, or that an attorney or guardian agrees on their behalf. There may be situations where a resident does not wish to see a visitor, or where a visit is inappropriate. There may be circumstances where it is necessary for the managers of a care home to exclude visitors, for example where a visitor is abusive, in order to protect staff and other residents. As above, such restrictions should be necessary and proportionate.

Question 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?

See our answer to question 2, above.

Question 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?

See our answer to question 2, above. It is not sufficient to simply state a right in law. Any new legislation must provide an effective mechanism to allow adults living in care homes to secure their rights. This may be via action by the Care Inspectorate or other body empowered to enforce the law, by mediation, by access to the courts or by a combination of these mechanism.

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

The right to family and private life under Article 8 ECHR applies to residents in all care settings.

Question 7 -Please provide any further comments on the proposals

We have no further comments.



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