

CLOSING STATEMENT
ON BEHALF OF
CARE HOME RELATIVES SCOTLAND/ CHRS LOST LOVED ONES (CHRS)

INTRODUCTION

1. CHRS presents this closing statement in accordance with the direction of Lord Brailsford dated 30th April 2024. This submission will consider the evidence heard by the Inquiry and identify the key impacts experienced as a consequence of the pandemic. Thereafter, consideration will be given to the reasons for those impacts, and in what ways they might have been minimised or excluded. Proposals for potential further investigations are included in Appendix I.
2. The Inquiry will require to scrutinise the evidence, make findings and reach conclusions in accordance with its human rights and equality law obligations.¹ The evidence on impact clearly reveals disproportionate and unjustifiable interferences in the Article 8 rights of care home residents and their families. Indeed, the negative impact is such that the threshold of degrading and inhumane treatment contained in Article 3 has also been met.
3. The evidence of interference with these human rights from individuals and organisations is compelling and overwhelming, and it is supported by academic research before the Inquiry. The overall impression was that: “[t]he Inquiry is to have a human rights based approach but the pandemic showed that people didn’t have human rights”². As a result, the Chair is well placed to make findings and recommendations based on systemic adverse impacts on human rights.³ The recourse to an effective remedy is an essential and undeniable element of any human rights compliant response to a future pandemic⁴.

¹ Human Rights Act 1998, the Equality Act 2010, Inquiry’s Policy Statement on Trauma Informed and Human Rights Based Approach at [15] and [16]

² Margaret Kilpatrick, SCI-WT0287-000001 [112]

³ Inquiry’s Policy Statement on Trauma Informed and Human Rights Based Approach [17]

⁴ Article 13, ECHR

4. Accordingly, CHRS asks the Chair to publish an interim finding now with regards to the distinct issue of ‘Anne’s Law’, in light of the evidence heard and the crucial stage of the legislative process. It is submitted that the current provision that purports to implement Anne’s Law⁵ would not do so, and CHRS are fighting to ensure that the right is properly enshrined in primary legislation. This Inquiry could play an important role in this process: in that an evidence-based recommendation could be made regarding what the legislation ought to provide for. This would be entirely within the Inquiry’s remit and in accordance with its stated aim to demonstrate a human-rights based approach.

IMPACTS

5. It is submitted that the evidence has demonstrated a clear, overarching, impact on those resident in care homes: the restrictions imposed during the COVID 19 pandemic reduced their quality of, and dignity in, life. This affected them in different ways, and to different extents, but overall it is clear that care home residents are one of the groups of society that were disproportionately impacted by the restrictions.
6. The majority of residents in care homes are elderly, often with a range of mental and/or physical impairments, and while they represented a high-risk group in terms of both infection and death from COVID 19, they were a group of society whose last years and months were precious, and for whom contact with loved ones was often a vital lifeline. This group are not simply confined to their homes: many lead valuable and full lives in the community – enjoying trips out, visiting friends and family and socialising. Further, it is important to remember that not all residents are elderly: there are many young adults living in homes or supported accommodation who enjoy playing an active and valuable role in society.
7. It is submitted that the right to contact and socialisation with loved ones, and to engage in wider society, is one of the most fundamental human needs: its denial, and isolation, is a most extreme form of punishment. All care home residents, young and old, have a right to have these rights respected, however there were excessive and prolonged

⁵ S.40 ,National Care Service Bill

periods where significant restrictions were placed on visits and on their ability to socialise outwith the homes – which impacted on their health and wellbeing, as well as infringing their human rights. There was little apparent balancing of risk that the impact such severe restrictions and isolation could have on people, particularly those with conditions such as dementia.

Particular impacts, that were foreseeable and significant

Failure to acknowledge essential care givers/partners in care

8. The evidence has demonstrated clearly that in many instances family members were essential care givers, and very much part of the care team: they were not simply ‘visitors’⁶. Verona Gibson explained that before the pandemic, her daughter’s home had been an extension of her own: she could go there any time, knew all the staff, and was involved in every aspect of her life. Family not only provided care and support, but frequently lessened the burden on care home staff, and offered a valuable source of assistance. There was evidence that family would spend lengthy periods⁷ with relatives, assisting with meals and mobilisation⁸. Morven Palmer explained that she was essentially regarded as part of the care team, and would ‘give staff a break’. Marion McParland said she was an integral part of her mum’s care team: there was an ‘unofficial agreement’ with the care home staff that they would share the care. Alison Walker explained how important it was for her mother to have family contact, to keep her active and motivated. In addition to providing the practical help and support, Diana Montgomery made the important point that frequently loved ones will pick up on things that would pass others by. Donald Macaskill explained that families were an essential component for care teams, and often freed up staff to spend time with other residents. Unfortunately, this essential care giver role was not understood or taken proper account of by decision makers and this critical resource was withdrawn.

⁶ Cathie Russell, Anonymised SC I-WT0374-000001 , Marian Reynolds

⁷ Gillian Duncan said she would often spend entire days there, Morven Palmer was there every day.

⁸ Sheila Hall, Alina Duncan, Gillian Duncan, Morven Palmer, Jane Cooper

Denial of contact

9. The inquiry has heard many harrowing tales of the ways in which basic and essential contact with loved ones was denied, and the impact this had on residents and their families. In many instances, residents quite simply did not understand what was happening to them: Cathie Russell's mother and Gillian Duncan's father both asked whether they were in prison, and Verona Gibson's daughter said she felt like a prisoner. Perhaps, effectively, they were: it should be recognised that isolation is a form of restraint. Indeed, Jane Cooper commented that there may have been more rights in prison. Alison Leitch spoke of her mum being held back from her by the use of police tape. Cathie Russell's mother said that she didn't care about covid: she wanted to see her family. Both she and Margaret Kilpatrick's mother felt that their situation was worse than it had been in World War II. Witnesses spoke of feelings of abandonment⁹.
10. While for many in 'normal' society technology eased social isolation, many care home residents simply could not understand or operate the devices, often having hearing or eyesight difficulty which made the exercise futile. Alison Leitch spoke of having to watch her mother claw at her face, as she didn't understand where her daughter's voice was coming from. Many residents found the experience of skype or zoom calls confusing or distressing¹⁰.
11. Garden visits were used by many homes, but again the evidence demonstrated these were unsatisfactory and often caused more distress. Alison Walker spoke of her mother being physically pulled away from her in the garden – using the analogy of her being treated like an animal in a zoo. Window visits were similarly unsatisfactory – one of the more extreme examples was Sandra Ford, who had to stand on a pile of bricks to reach a window to see her mother. Shona Wallace told how her daughter Clare was anxious during window visits, would pull at the neck of her tee-shirt, and hardly spoke.
12. While all parts of society endured limitation on interaction during the pandemic, it is submitted that care home relatives experienced a disproportionate limitation, and were discriminated against. Particularly towards the end of 2020, and in 2021 when the rest of 'normal' society was returning to social interaction, there was no justification for the

⁹ Sandra Ford and Jane Cooper

¹⁰ Lucy Challoner, Alina, Anonymised SCI-WT0364-000001, Kristin, Carolyn

continuing restrictions in care homes. Donald Macaskill of Scottish Care has said: “such extended periods of isolation “are unacceptable, disproportionate, unnecessary, and hugely damaging.””

Essential/end of life visits

13. The evidence highlighted a significant issue regarding the confusion and misunderstanding around ‘essential’ visits, and end of life visits. The policy ought to have been clear and consistently applied: they should be allowed for end of life, and crucially, to alleviate distress. The latter seems to have been very rarely allowed, and often only if a relative insisted. Perhaps the most distressing evidence came from those relatives who had to endure an unnecessarily distressing disruption to their contact with loved ones towards the end of their life. Witness SC I-WT0374-000001 spoke of having to stay two meters away from her mother, who was dying, and had to wear a mask. Marian McParland was refused essential visitor status, even although her mother was dying. What was apparent is the terms ‘essential’ and ‘end of life’ were ambiguous and misapplied – Donald Macaskill confirmed this, saying many care providers were interpreting ‘end of life’ as meaning literally someone’s last hours. This uncertainty and inflexibility caused significant, and unnecessary, distress.

14. The Inquiry is asked to acknowledge the number of residents that will have died alone, without any visits – or only receiving one at the very last stage, when they may have been unaware: around 16,000 in the first 12 months of the pandemic¹¹.

Homes not treated as ‘home’

15. There was frequently a failure to appreciate that a care home was an individual’s home, which required their personal belongings and mementoes to give it meaning. Alison Walker spoke of the Christmas decorations being disallowed in 2020, and Witness SCI-WT0364-000001 was not allowed to bring in gifts – even a banana was confiscated. The evidence from Crossreach was that particularly for people with dementia, they depended on routine and familiarity with their surroundings – however homes became more clinical and felt less like someone’s home. This was dehumanising.

¹¹ Kristen Duncan

Decline in health

16. The restrictions faced by care home residents, in particular the lack of meaningful contact with loved ones, caused significant mental and physical distress, and is likely to have contributed in a number of cases to cognitive and emotional decline, and even death.
17. There was clear evidence that the lack of family contact, and being isolated for days on end, took a physical and mental toll on many residents. Many spoke of a decline in posture¹², muscle fatigue and a general marked change. Tracey McMillan felt that her mother was ‘getting lost within herself’, and her ultimately her treatment hastened her death. Kristen Duncan said that the lack of meaningful contact had a profound effect on her mother’s mental and physical health. There was evidence of residents becoming lost, withdrawn¹³, losing weight and even behaviour changing¹⁴. Marion McParland said her mother looked like she had ‘given up’ and was affected by the isolation and lack of contact.
18. Verona Gibson gave moving evidence about the impact of the restrictions on her daughter . It affected her mood, she became more emotional. She felt like she had ‘lost her family. Verona spoke of the ongoing impact on her, in that she doesn’t think of the future, there is no more talk about moving into a community setting, which there had been before - previously she had felt valued by her outings into the community. She became lethargic, disengaged and put on weight.
19. The Inquiry also heard evidence that care home residents received inadequate medical care, ranging from GP services to more serious therapies¹⁵ and treatments, and were even refused admission to hospital. Gillian Duncan stated that her mother’s end of life care was paracetamol.

Masks

20. The evidence demonstrated that the use of masks caused distress, confusion and considerable difficulties with communication. Residents couldn’t see smiles, had

¹² Alina Duncan

¹³ Jane Cooper

¹⁴ Sandra Ford

¹⁵ eg physiotherapy (Lucy Challoner) diabetes management (Tracey McMillan)

difficulty recognising relatives and those with hearing difficulties couldn't lip-read or read facial expressions or visual clues¹⁶. Some witnesses spoke to being made to wear them, even for window visits¹⁷. Lucy Challoner said that her gran felt that people were laughing at her behind them.

Impact on relatives

21. There were a range of impacts felt by relatives of those in care homes. The first was their distress and frustration at being kept away from their loved ones, particularly when the rest of society began moving towards normality. Communication with care homes was frequently spoken of as being poor – with engaged lines and being simply told their relative was ‘fine’. There was evidence that families felt powerless, Diana Montgomery describing it as being impotent. Further, many spoke of a sense of guilt¹⁸ - while some relatives felt that they could only achieve results or a change in conditions if they ‘pushed’ care home management or staff, others felt that they should have pushed more¹⁹. Some witnesses voiced a feeling of being ‘policed’.

22. In addition to dealing with the loss of contact, relatives found themselves in potential situations of conflict or difficulty with care home staff: people who they trusted to be in direct, day to day, contact with their relative – something that had been denied to them. The evidence demonstrated there was a ‘power shift’²⁰, and also that families became compliant – grateful for whatever dispensation or allowance they were given. They didn't want to cause a problem, or be difficult²¹. Gillian Duncan said that she became exhausted with the restrictions, she simply accepted what little was allowed to her – she felt ‘beaten down’. Frequently families felt like trouble-makers, or a nuisance, if they challenged or sought to question decisions²². Families were “learning quickly that we had to learn to be compliant”²³ Shona Wallace said that at times she felt like she was the enemy, and there was no trust between staff and family – Alison Walker

¹⁶ Kirstin Duncan, Verona Gibson

¹⁷ Shona Wallace

¹⁸ Sheila Hall, Sandra Ford

¹⁹ Marion McParland

²⁰ Tracey McMillan: until Covid, she felt that she had worked together with care home staff.

²¹ Marian Reynolds, anonymised SC I-WT0374-000001

²² Tracey McMillan,

²³ Campbell Duke's, Day 7, page 69

expressed it as ‘us against them’. Families naturally felt that if they were viewed negatively by care home staff, there might be a risk of that affecting their relative.

23. Finally, families have suffered a clear loss of trust in public bodies associated with the pandemic response and care of their loved ones. They felt that management used government legislation and public health rules to hide behind and keep relatives out²⁴. The “finger pointing” between care homes and Public Health Scotland (PHS) was not helpful²⁵, and it was felt that the outcome of most meetings was another meeting²⁶. Verona Gibson commented that nobody wanted to find any kind of creative approach to try to lessen the problems for her daughter because “everybody spent their time telling what we couldn’t do but nobody wanted to [...] flip the record and look at how we could make things happen for people”²⁷.

DNACPR/POA/consent

24. The evidence demonstrated a widespread disregard for powers of attorney (POA) or guardianship orders. The policy in place at the time provided that “*where there is a legally appointed proxy decision-maker (welfare attorney or welfare guardian) they must be involved in the decision-making process. Relevant information should be shared with those close to the patient*”. However, there was little evidence of this policy being implemented: there was no direct evidence of recognition of and respect for POA or guardianship orders and many decisions were made with little involvement of family. Many spoke of having powers of attorney that were not respected²⁸, or ‘worthless’²⁹. There was further evidence of a more general disregard for autonomy, with residents being tested without their consent. Morven Palmer had guardianship for her daughter, but her evidence was that her ‘guardianship counted for nothing’ when her request that her daughter’s care home didn’t test her without consent was ignored.

²⁴ Alina Duncan, SCI-WT0378-000002 [90]

²⁵ Lucy Challoner, SCI-WT0358-000001 at [191]

²⁶ CHRS, Cathie Russell, Day 3 page 97

²⁷ Verona Gibson, Day 13, page 32

²⁸ Carolyn Murdoch

²⁹ Amanda Burnett

**REASONS FOR IMPACTS/WHY MIGHT HAVE BEEN MINIMISED OR
EXCLUDED**

Lack of Understanding

25. There was a fundamental lack of understanding of the life, realities and priorities for those in a care home setting, their families and staff by decision and policy makers³⁰. It is clear that “for people who did not have a loved one in a care home they simply did not know what it was like on the ground”³¹. There was a “misconception about who lives in care homes [...] Nobody else was taking account of other harms that were happening”³². The fact that PHS produced Covid guidance that amalgamated care homes with prisons demonstrates clearly such lack of understanding³³.

26. In addition to failing to understand and appreciate the importance of the essential care givers as members of the care team, there was a failure to understand that they would have a paramount interest in keeping their relative safe, and indeed were often already experts in infection control: “the people who have the most interest in making sure that their families don’t become ill are the family members, nobody else can have that level of interest”³⁴. Shona Wallace explained that: “[w]hen you have a child [...] and] when they were born you were told that they would be lucky to see their 3rd birthday, there’s no way you’re going to miss any birthday.”³⁵

No balanced, flexible or person-centered approach

27. Scottish Government and their public health advisors saw COVID 19 as the only possible “harm”: they failed to consider and balance the trauma and the effect on mental health that enforced separation from loved ones would cause.³⁶ There was a lack of

³⁰ Alison Leitch, SCI-WT0368-000002 [98]

³¹ CHRS (SCI-WT0731-000001) [22]

³² CHRS, Alison Leitch, Day 3, page 92

³³ Sheila Hall, paragraph 98

³⁴ Diana Montgomery, SCI-WT0628-000001 [123]

³⁵ Shona Wallace, Day 9, page 28-29

³⁶ CHRS (SCI-WT0731-000001),

understanding of vulnerable groups and their needs. The only focus was on the “hard stuff” and not on the “soft stuff (emotional and spiritual care [which] is important”).³⁷

28. ‘Group think’ took over at the Scottish Government and public health: “ nobody was asking the obvious questions like ‘How would you feel if you were told you couldn’t see your husband or wife for a year or more?’”³⁸. There was no understanding of what happens when people in care home lose contact with those who are most important to them, nor that their sense of isolation was “exacerbated which affects their health and wellbeing. And it affects the whole family”³⁹. In reference to his late wife Anne, Campbell Duke lamented that: “they knew what they were trying to protect Anne from, but they never seemed to understand what they were protecting her for”⁴⁰.

Lack of planning/proper consultation

29. If there had been pandemic planning in relation to care homes, few witnesses, if any, spoke of being involved. It was said that “if they had any plan at all – it was to do nothing to reunite people and wait on a vaccine”.⁴¹ The evidence demonstrated that the Covid response was based on “a knee jerk reaction about just slamming the gates shut” which had the effect of “terrifying people”⁴². Family members doubted whether the authorities ever seriously contemplated the unintended consequences of closing care homes.⁴³

Guidance

30. The Scottish Government failed to provide clear direction to care homes or insist that guidance was adopted and followed consistently.⁴⁴ Families were crying out for simple guidance but “were left trying to plough through this plethora of 32 page documentation

³⁷ Sandra Ford, SCI-WT0376-000001 [129]

³⁸ Cathie Russell, SCI-WT0366-000001 [185]

³⁹ Jane Cooper, SCI-WT-0854-000001 [230] [231]

⁴⁰ Day 7, Campbell Duke, p 85

⁴¹ Cathie Russell, SCI-WT0366-000001 [85]

⁴² Margaret Kilpatrick, SCI-WT0287-000001 [107]

⁴³ Campbell Duke, [106]

⁴⁴ CHRS, SCI-WT0731-000001 [60].

that kept coming out”⁴⁵ and managers were inundated with guidance from different bodies.⁴⁶

31. The evidence demonstrated a widespread failure to consistently interpret and apply guidance. This was the responsibility of the individual care home managers, and given the lack of clarity managers would often err on the side of caution, to the detriment of residents’ rights. Where an English care home operated homes within Scotland there are examples of English guidance being applied as opposed to the Scottish Guidance⁴⁷. There was nowhere for managers to consult and obtain uniform advice⁴⁸. As a result, families felt that “these rules were made up by the staff at that time with no reference to guidelines or the needs of the families [...] We were at the mercy of whatever the Care Home decided”⁴⁹. The issue of visiting “was like looking through fog as there were just such frequent changes and different interpretations”⁵⁰. The evidence demonstrated that was a “post code lottery” in respect of the interpretation and implementation of guidance.⁵¹, and the lack of consistency resulted in unfairness: “[u]ntil Anne’s Law is in place, relatives and friends will always be at the mercy of someone making a decision just because they can”⁵².

32. As an example, although a guidance letter from the Health Minister advised that visits with touch should be allowed, a CHRS survey demonstrated that over 90% of respondents had not been allowed a visit that included touch.

33. Guidance was also constantly changing, and poorly communicated⁵³. The Scottish Government regularly sent out care home guidance late on a Friday afternoon which meant that managers normally received this just as they were finishing for the week⁵⁴. Furthermore, it could take “up to a week for changes in guidance to filter down to all

⁴⁵ Day 3, CHRS organisational evidence, Sheila Hall, 101

⁴⁶ Verona Gibson, SC I-WT0452-000001, [106]

⁴⁷ CHRS (SCI-WT0731-000001), [31] [33]

⁴⁸ Sheila Hall, SCI-WT0360-000001 [92]

⁴⁹ Jane Cooper, SCI-WT-0854-000001 [217] and [218]

⁵⁰ Morvan Palmer, SCI-WT0382-000001 [50]

⁵¹ Natasha Hamilton, Day 3, p113

⁵² Alison Leitch, SCI-WT0368-000002 [88]

⁵³ Marion McParland, SCI-WT0486-000001 at [34]

⁵⁴ Alison Leitch, SCI-WT0368-000002 [94]

the different levels of management and staff”⁵⁵. Sometimes family members had to tell the care home there was new guidance and information to be passed on to managers⁵⁶.

34. The general lack of consultation was evident in relation to guidance - families felt that there was “somebody telling [care homes] what rules and restrictions they had to implement. You felt like you were fighting against them”⁵⁷. Everybody who worked in the industry “got a say”, but families did not get one⁵⁸. Margaret Kilpatrick remarked that “[i]t was almost like you were in an institution and you were just to do what you were told”⁵⁹. Effectively, the guidance “seemed to come from this ivory tower”⁶⁰. In effect, those in care homes went “from being “your relatives” to our residents”⁶¹. Furthermore, “it seemed as if nobody was thinking through this guidance and what the implications would be”⁶².

35. An important impact of the deficient guidance was the misunderstanding around essential end of life visits: “every person that had a loved one in a care home should have known about essential visits from day one”⁶³. Instead, information about essential visits was finding “like this hidden kind of secret”⁶⁴. Kristin Duncan provided a powerful illustration: “[w]ithin a few weeks of lockdown, we began to hear heart breaking stories of parents being unable to be beside their dying children in hospitals, or husbands/wives separated in the same way.”⁶⁵

Lack of leadership

36. It should not have taken the formation of CHRS in August 2020 for the Scottish Government to take residents’ and their families’ rights into account⁶⁶. As stated by Sheila Hall: “[w]e needed someone to be that spokesperson, to provide clear and consistent advice and not treat care homes as institutions or clinical settings where

⁵⁵ Anonymised statement, SCI-WT0374-000001 [57]

⁵⁶ Alina Duncan, SCI-WT0378-000002 [48]

⁵⁷ Natasha Hamilton, SCI-WT0370-000001 [61]

⁵⁸ Natasha Hamilton,

⁵⁹ Margaret Kilpatrick, Day 9

⁶⁰ Sheila Hall’s, Day 11

⁶¹ Shona Wallace, SCI-WT0362-000001 [158]

⁶² Alison Leitch, Day 7, 143

⁶³ Natasha Hamilton, Day 7

⁶⁴ Lucy Challoner’s, Day 8

⁶⁵ Kristin Duncan, SCI-WT0729-000001 [77] [79]

⁶⁶ Alison Leitch, SCI-WT0368-000002 [92]

residents were treated like dogs in quarantine”⁶⁷ While some care homes “maybe were out of their depth”, “there was clearly a great reluctance to take on responsibility themselves and make decisions”⁶⁸. Nobody would go against a care home whether that be social work, or the Care Inspectorate⁶⁹. Other bodies responsible for protecting vulnerable groups were absent while human rights were “completely thrown under a bus”⁷⁰. During the pandemic, “no-one helped residents or resident’s families”⁷¹.

Lack of redress

37. Family members “found it very difficult to query or complain [...] due to the potential impact on mum and dad and ongoing relationship with the care home”.⁷² Many felt that they lacked “a voice to challenge the restrictions that were in place”⁷³. CHRS felt “[i]mprisoning people for a year and isolating people in small rooms for weeks on end should have been challenged”⁷⁴ but “[we] simply had no access to justice”⁷⁵.
38. CHRS was concerned that the care home managers and public health departments were giving insufficient reasons as to why relatives were being excluded from care homes, often citing “infection control measures”. Relatives had no right of appeal⁷⁶. Furthermore, the directors of public health “were accountable to no one and could do what they wanted”⁷⁷.
39. Seeking redress from the Courts would not have been possible, or practicable, for the families of care home residents. During a time of national crisis, it would not have been reasonable to expect individuals to seek legal advice, and obtain funding, to try and review decisions in a Court setting. This is one of the reasons that Anne’s Law is vital, so that in the future families have a right to rely on in Court.

⁶⁷ Sheila Hall, SCI-WT0360-000001 [90]

⁶⁸ Sandra Ford, Day 11

⁶⁹ Shona Wallace, SCI-WT0362-000001 [101]

⁷⁰ Verona Gibson, SCI-WT0452-000001, [110] [113]

⁷¹ Morvan Palmer, SCI-WT0382-000001 [79]

⁷² Anonymised, SCI-WT0374-000001 [39]

⁷³ Anonymised, SCI-WT-0364-000001 [97]

⁷⁴ CHRS (SCI-WT0731-000001) [63]

⁷⁵ Cathie Russell, SCI-WT0366-000001 [192]

⁷⁶ CHRS (SCI-WT0731-000001 [34]

⁷⁷ CHRS (SCI-WT0731-000001) [96]

ANNES LAW

40. It is submitted that the evidence heard during these Impact Hearings demonstrated eloquently the desperate and compelling need for Anne’s law to be implemented. Residents of care homes should have a right to appoint an essential care giver (a family member, or special contact/friend), who would form part of their care team, and they should be able to have contact with, and access to, them at all times. As part of the team, these ‘unpaid carers’ would be subject to the same restrictions and rules as paid carers, particularly during periods of specific control requirements: as the inquiry has heard, these people are often already knowledgeable and expert in infection control. They should be seen as having a positive and enabling role, not as posing any sort of threat or hindrance to care.
41. The Inquiry has heard of the futile effect of guidance, or letters from officials or ministers: what is required is a cast-iron right, that could form the basis for judicial review, if necessary. Guidance, or deference to PHS is not good enough. It should be noted that PHS guidance continues to fail to acknowledge the concept of an essential care giver. Because Anne’s Law is not yet enacted in legislation, there remains no guarantee that another prolonged lockdown, which would imprison care home residents and deny them access to their loved ones, could not happen⁷⁸.
42. There has been widespread, cross-party, support for Anne’s Law and this Inquiry has heard no evidence to suggest that it should not be enshrined in law. On 7th September 2021 the then First Minister, Nicola Sturgeon, pledged that “we will introduce Anne’s law, **giving nominated relatives or friends the same access rights to care homes as staff**”.
43. However, the current provision, as set out in s.40 of the National Care Service Bill does not fulfil this pledge and would **not** deliver Anne’s Law. It is an insipid provision which simply directs Ministers to issue visiting directives: there is no specific provision that offers to confer any right. The accompanying policy memorandum sets out that current guidance ‘is not enforceable however, and there is widespread support for providing

⁷⁸ CHRS organisational statement [48]

clarity through legislation to promote a consistent approach to supporting and enforcing requirements to enable people to remain connected with those important to them even in outbreak situations'. While the Bill claims to embody a human rights approach, this is not the case, as no right is conferred.

44. The Bill is currently proceeding through the legislative process, at Stage 2. This is accordingly a critical phase in the development of the provision, and the Chair could play an important role at this stage by making a recommendation, based on the evidence, to express what Anne's Law ought to provide for. There would be no need to hear further evidence (eg of policy makers) to make such a recommendation: the clear, consistent and overwhelming evidence during these hearings would be sufficient.

45. The Chair is accordingly invited to make a finding to recommend that clear and specific provision is made for those resident in care homes, or in supported accommodation, to have a right to access to, and contact with, one named essential care giver, who will have the same rights and responsibilities as paid carers.