



JUDICIARY OF
ENGLAND AND WALES

THE HONOURABLE MR JUSTICE HAYDEN
VICE PRESIDENT OF THE COURT OF PROTECTION

This morning I have been looking at the new tiered restrictions for England, announced in the House of Commons on 12th October 2020, effective as of 14th October 2020. As I write this document, I am aware that areas falling into the category of Tier 3 are likely to be expanded.

Of particular concern to us, in the Court of Protection, is the impact the present arrangements may have on elderly people living in Care Homes. The extent to which this group has suffered during the course of the pandemic public health crisis is well known and documented. One of the limited number of positives, is that it was possible to establish pragmatic and imaginative arrangements for contact with relatives during the course of what we have come to know as ‘Lockdown.’ This became known as ‘window contact’, though that phrase did not always do justice to the safe and creative measures devised. As restrictions were relaxed over the summer, contact arrangements also became much more flexible within the Care Homes.

The new guidance: **Health protection (Coronavirus, Local COVID-19 Alert Level) (Very High) (England) Regulations 2020 (SI 2020/1105)**. Schedule 2 specifies the areas to which the regulations apply. Schedule 1, Tier 3 restrictions Part 1, section 5 provides:

Exceptions in relation to indoor gatherings

5.—(1) These are the exceptions relating only to indoor gatherings.

Exception 1: visiting a dying person

(2) Exception 1 is that the person concerned (“P”) is visiting a person whom P reasonably believes is dying (“D”), and P is—

- (a) a member of D’s household,
- (b) a close family member of D,
- (c) a friend of D.

Exception 2: visiting persons receiving treatment etc

(3) Exception 2 is that the person concerned (“P”) is visiting a person (“V”) receiving treatment in a hospital or staying in a hospice or care home, or is accompanying V to a medical appointment and P is—

- (a) a member of V’s household,**
- (b) a close family member of V, or**
- (c) a friend of V.**

Exception 3: informal childcare

(4) Exception 3 is that the gathering is reasonably for the purposes of informal childcare provided by a member of a household to a member of their linked childcare household (see paragraph 8).

This provision **permits** contact with relatives ‘**staying**’ in Care Homes, under the same arrangements presently assessed as Covid-19 compliant. It will undoubtedly be the case that the actual arrangements will have to be tailored to the particular individual and the circumstances within the home, during the course of what we have now recognised to be the second wave of the pandemic. What is important to emphasise is that these arrangements have been identified within the Regulations made by the Secretary of State and are therefore lawful.

15th October 2020