

The suspension of routine inspections renders care homes invisible to scrutiny and costs lives



Alison Tarrant and **Lydia Hayes** explain how certain regulatory changes have led to legal standards being potentially contravened behind care homes' closed doors. Researchers and regulators now face an urgent mission to stop such violations and save lives.

The number of people living in care homes in the UK is comparable to the population of the city of Bristol. Imagine if Bristol were ravaged by COVID-19. Imagine that 20,000 Bristolians had died in the space of just four weeks, some of them in [unnecessary pain](#) without access to sedation. Imagine the intensification of the catastrophe if Bristol were cut off from the outside world, friends or family were not allowed inside the city, and the authorities had chosen not to inspect what was happening in real time. Furthermore, imagine that the city's population is served by hundreds of thousands of workers employed by many different private companies that now operate without scrutiny. The workers are largely untrained, have been without adequate protective equipment for weeks and are ill-equipped to give optimal care when a Bristolian contracts the virus. While the hospitals continue to refuse to admit residents who are ill, and access to advice from GPs is patchy across the city, the death toll rises every day.

This analogy reflects the scale of what has happened in care homes. In the week before the UK formally went into lockdown on 23 March, the official regulatory agencies for care and support services in [England](#), [Scotland](#) and [Wales](#) each announced the suspension of routine inspections. With that suspension, each of the regulators dispensed with the core means by which they could examine what goes on in care homes. The legal function of inspection is to establish whether the provision of care meets basic standards of safety and quality, which are set out in law and cover matters such as sufficient staff numbers, safe care practices, provision of adequate food and hydration. Without routine inspection, there has been no mechanism for systematic examination of the care being provided during the pandemic, nor the impact of COVID-19 in care settings.

Correspondence from regulators to care providers suggested the decision to suspend inspection would free care providers from bureaucracy and enable their complete focus on the safety of care. However, it has become tragically clear that care has *not* been provided safely. We know this by the unfolding catastrophic consequences of unsafe care. In early April, [our research](#) found that a majority of care workers said that not enough was being done to keep them safe, and neither did they believe enough was done to protect the people for whom they cared. We highlighted how widespread non-payment of wages to care workers for self-isolation was fuelling transmission risk, as well as fears about the sharing of staff between homes and confusion over availability and use of PPE. Compassion in Care [has reported a massive increase in calls](#) to its whistleblowing helpline for care and support workers, who detail dreadful conditions and truly shocking attitudes from employers towards staff who report concerns.

The consequences of disregard for care standards can be fatal and regulators are now stepping in to deal with the aftermath. On the Isle of Skye, [people have called for 'honesty'](#) because they were 'kept in the dark' about 30 residents and 29 staff contracting COVID-19 in a 34-bed care home. They want to know '[why serious failings of care were discovered so late on](#)'. To date, seven of the residents have died from COVID-19 and the Scottish Care Inspectorate has acted to remove registration from its operators HC-One, the largest care home provider in the UK.

In England, 11 residents have died from COVID-19 in a small 30-bed care home in Kettering which has now been ordered to close by the Care Quality Commission (CQC) due to serious concerns about safety. Relatives of the residents are 'in shock' after more than seven weeks of assurance by phone calls from staff claiming there was no coronavirus in the home. [One relative explained](#), 'to say they had not had any cases was not right. We all thought the home had been doing an amazing job by not having any cases'. The home is one of 60 operated by Minster Care Group across the UK.

[There is evidence](#) that the potential for widespread regulatory breach during the pandemic was something of which regulatory bodies were aware. For example, the CQC [has pointed](#) to the unlawfulness of any blanket issuing of 'Do Not Resuscitate' notices for residents. It also addresses the fears of providers about potential prosecution for serious injuries occurring when there are [insufficient staff](#) on duty. Across the UK, the regulatory consensus has been that legal standards are at risk during the pandemic and the prospect of care providers struggling to meet such standards was anticipated. Furthermore, regulatory agencies and government departments appeared to accept that breach of legal requirements was an inevitability. In place of standard practice, regulators have stressed the importance of proportional and flexible approaches to compliance and the Department of Health and Social Care [introduced a new decision-making primer](#) based on calls for ethical reflection. What has been set in train is an unofficial, but officially facilitated, evasion of legal obligations.

With friends and family excluded from visiting relatives in care homes, the suspension of inspection has hidden care practices from view and made care homes invisible to scrutiny. Although the regulators have always maintained that investigation could be triggered in response to the most serious concerns, they have been unable to rely on the 'eyes and ears' of visitors to raise the alarm and care workers have been frightened to speak out.

Yet, as the human rights tragedy in social care is made increasingly clear, the pendulum [has begun to swing back](#). On 15 May, the Secretary of State announced new arrangements to connect care homes with the NHS and with local authorities to deliver 'the most intense support and scrutiny that care homes have ever received'. In this widely criticised address, he omitted to acknowledge that prior capacity for scrutiny had been removed in early March. The enormity of care home deaths means that widespread and gross violations of legal standards are likely to come to light over the coming weeks and months. Regulators will need to reinstate their inspection function. However, the pandemic has raised fundamental questions as to the purpose and value of the regulatory law that underpins the provision of social care.

As Bob Hudson [has recently argued](#), there is a growing and very serious charge sheet about the management of coronavirus in care settings which requires both accountability and justice. A [public inquiry seems inevitable](#), but we should not forget that inquiries can be used to kick scrutiny into the long grass, terms of reference are uncertain, and any verdict could be years in the making. What is needed here and now is an urgent mission by regulators and researchers to understand what is going on in care settings so that violations of legal standards can be stopped and lives saved.

Note: the authors are currently undertaking research for the Social Care Regulation at Work project, based at Kent Law School. For more information see [here](#).

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