



## NEWS

# Covid-19: Woman with terminal cancer should be released from care home to die with family, says judge

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The BMJ

A High Court judge has ruled that an elderly woman with terminal cancer should be released immediately from a care home to die surrounded by her family.<sup>1</sup>

The Court of Protection judgment comes at a time when visitors are banned from care homes for fear of infection by covid-19, and many residents face the prospect of dying without their families.

Mrs Justice Lieven ruled, although she could find no case law to say so, that the right to die with one's loved ones was covered by article 8 of the European Convention on Human Rights, the right to a private and family life.

"The ability to die with one's family and loved ones seems to me to be one of the most fundamental parts of any right to private or family life," she said. "It would seem to me self-evident that such a decision by the state that prevents someone with a terminal illness from living with their family must require a particularly high degree of justification."

But in another case, brought in March by the daughter of an 83 year old man with Alzheimer's disease and deafness, a different judge ruled that a ban on family visits was justified.<sup>2</sup>

Mr Justice Hayden noted in that case that the state could derogate from article 8 and from article 5, the right to liberty, "in time of war or other public emergency threatening the life of the state," and he ruled that the covid-19 pandemic was such an emergency. He held that the care home was justified in not arranging family visits, even though the man's deafness meant that he could not use a telephone or Skype.

Lieven said that the latest case was different because the woman had terminal cancer that had spread to her vital organs, and she had been given between a few weeks and six months to live. She died two days after her release from the care home.

## Palliative care

Both cases were heard in the Court of Protection because the two care home residents were assessed as lacking the capacity to decide for themselves where they should live.

The woman, referred to as AO, was Nigerian and had come to the UK 20 years earlier to live with her daughter. Her birth had not been registered, but she was aged either 78 or 87, said Lieven. She had previously gone every second weekend for stays at her daughter's house, where there was a room for her and family members could assist.

An associate director from the local clinical commissioning group told the court that the group could commission palliative care and that district nurses, who were still visiting homes during the pandemic, would assist with end of life care.

The manager of the care home gave evidence that AO had a cough and was being isolated in the care home. She told the judge that none of the residents had been tested for covid-19, although some had symptoms and were being isolated. Others who had recently died might have had the virus, but it was impossible for carers to know, given that they had not been tested.

In a postscript to her judgment delivered on 5 May, Lieven said that AO had died two days after moving on 20 April to her daughter's home, with her family around her. "I do not know what she died of and whether she had, indeed, contracted covid-19," she said.

- 1 VE v (1) AO (By her litigation friend, the Official Solicitor), (2) The Royal Borough of Greenwich, (3) South East London CCG. [2020] EWCOOP 23. <https://www.bailii.org/ew/cases/EWCOP/2020/23.html>.
- 2 BP. v Surrey County Council and RP. [2020] EWCOOP 17. <https://www.bailii.org/ew/cases/EWCOP/2020/17.html>.

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