

Care homes: Are your terms and conditions consumer law compliant?

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The advice applies to operators of all care homes for people over 65 in the UK, regardless of whether residents are self or state funded. There is a short form guide also available.

Overview

The advice sets out what the CMA considers care home operators should do to comply with consumer law in order to protect residents. It reiterates the obligation of care homes to provide their services with reasonable care and skill and also covers what care homes:

- should provide in terms of **up-front information** to prospective residents and their representatives, so that they can make informed choices
- need to do to **ensure that their contract terms, policies and procedures are fair** and not weighted too much in a care home's favour
- should have in place in respect of **complaints handling** policies and procedures – it must be easy to access, easy to use, fair and consistent.

What is unfair?

Some of the main points deemed to be unfair within the advice are:

- binding residents to 'hidden' terms they have not had the chance to read and/or understand e.g. termination
- requiring residents to pay large deposits when the purposes for these are not clear, or allowing a care home a wide discretion to retain deposits without justification
- requiring residents to pay substantial up-front payments (unless this is an advance payment of their residential fees)
- requiring a guarantor without providing full and clear details up-front about the extent of their potential liability for defaults by a resident
- excluding or limiting a care home's liability if it's their fault when things go wrong
- requiring residents to pay full fees for periods when they are temporarily absent, where the care home saves money by not having them there
- requiring fees to be paid for extended periods after a resident has died.

The advice also recommends that care homes:

- make clear the circumstances in which changes to fees can be made and how they will be calculated
- notify residents of a price increase at least 28 days in advance of it applying
- clearly explain the situations when a resident might be asked to leave
- give residents at least 28 days' written notice to leave (unless they are staying on a trial period, in which case the notice period can be less but must still be sufficient to allow them to make alternative arrangements)

- review a resident's position at the home after a set period of absence (e.g. 8 – 10 weeks) to ascertain whether they are likely to be able to return. In the interim, the home should be discounting their fees to reflect that a resident is no longer benefitting from certain aspects of the service.

The CMA has committed to conducting a compliance review in November 2019, assessing the level of compliance by care homes with consumer law and the progress made since the publication of its advice. It has warned that it may take further action before this where unfair and illegal practices are found.

The CMA and other enforcers, such as Trading Standards Services and the CQC, can take action against care homes that don't comply with consumer law. Failure to comply with consumer law can have significant financial implications as well as reputational damage. The CMA has already taken action against some care home providers in relation to charging certain upfront fees (including requiring Sunrise to repay c£2m in upfront payments) and charging fees for extended periods of time after a resident's death. Care homes may also face court action; contract terms which are found to be unfair will be unenforceable against a resident and any money paid as a result of that term may be recoverable. Residents may also seek compensation.

Next steps

Care home providers should:

- familiarise themselves with the guidance
- review their terms and conditions, promotional literature, fee structures and working practices to ensure compliance
- provide training to all staff who liaise with residents and their families particularly on admission to ensure compliance.

Browne Jacobson's commercial health team regularly supports clients with reviewing and updating contract terms. Feel free to contact [Clare Auty](#) or Joel Nixon to discuss your needs – we offer fixed fee reviews and redrafting services to the care sector.

Contact

Clare Auty

Partner

clare.auty@brownejacobson.com

+44 (0)121 237 3943

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