


CONSUMER LAW FOR CARE AND NURSING HOMES

VERSION No	1	
REVIEWED BY	Registered Manager (MP)	
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Statement

In this home we treat our residents fairly under consumer law. We ensure people are given the information they need to make informed choices, we are confident they will be fairly treated and are able to complain effectively if they have concerns.

All staff need to understand how consumer law affects us. We are dealing with people who may be very vulnerable. They may be frail, in poor health, or under a lot of pressure and emotional stress. We consider the difficult circumstances people might be in and their unfamiliarity with the process of choosing a care home. This policy will help us to follow the law and treat residents and their family or other representatives fairly. The full guidance provided by CMA (Competition and Marketing Authority) is 147 pages, concentrating on residents' Terms of Business with examples of fair and unfair terms.

Summary



Under the Consumer Law we:

- ✔ provide **upfront information**: indicating what information we give potential residents and their families or representatives, when to tell them, and how we tell them, such as we give potential residents our brochure containing the Service User Guide and Statement of Purpose as required by the Health and Social Care Act, inclusive of our Terms of Business (TOB), what services we provide and regulated activities, Complaints Policy and Procedure and other relevant information
- ✔ **treat residents fairly**: what we do to make sure that the way we treat people and our TOB are fair. TOB have been amended following the CMA (Competition and Marketing Authority) to ensure that our TOB are fair.
- ✔ provide **quality service**: how to make sure that we provide service to our residents with reasonable care and skill. This includes compliance with the Health and Social Care Act and its amendments and other relevant legislation such as IPC, Fire Safety, staff training, etc.
- ✔ **handle complaints**: we make sure that our complaints procedure is fair and easy for people to find and use. The Complaints policy and procedure is available on our website, in the entrance, in the Residents' Handbook in their rooms.

Under the Consumer law:

- ⊕ we treat residents and their family or other representatives fairly, we do not mislead them, behave aggressively, or act unfairly towards them
- ⊕ this applies before and after the resident has moved in or signed a contract
- ⊕ we give potential residents key information upfront, so they can make the right decisions (for example when researching their choices)
- ⊕ we make sure that our TOB with residents are fair
- ⊕ we do not put residents at an unfair disadvantage by using wording that tilts the balance of the TOB too much in our favour
- ⊕ we perform our services with reasonable care and skill
- ⊕ we have an effective way of dealing with complaints which is fair, easy to find and easy to use
- ⊕ As well as consumer law, there are specific regulations for care homes relating to safety and standards of care. These regulations are enforced by the sector regulators, who are the Care Quality Commission (for England)













What happens if we get it wrong?

-  If we do not follow the law, we could face court action. The CMA may seek a court order to stop breaches of the law and seek compensation for residents, or even treat it as a criminal matter, which could mean fines and imprisonment.
-  Residents may in some cases also be able to claim damages in the courts. If our contract terms are unfair, we won't be able to enforce them.


The Policy

1. Upfront information


Choosing a care home is typically an emotionally difficult decision. We provide the information which people need to make informed choices. Providing them with clear, accurate and timely information is therefore vital to comply with consumer law.


- a) **What to remember:** in summary, we must give potential residents and their families or other representatives all the information they need to be able to make informed choices, including whether to make further enquiries or visit the home. The way the information is provided must be
 -  at a time that ensures that people can understand and engage with it
 -  in a clear, accurate, accessible and easy-to-understand manner, with appropriate prominence
 -  in all the places that people are likely to look for it (which includes on our website and during telephone or online enquiries about our home)
 -  Upfront information should be provided to all potential residents and their representatives, regardless of how their care is being funded. However, certain information (for example about our weekly fees) may only be relevant to residents who pay for their own care.
- b) **Giving 'key information' on first contact:** People look for information in different ways, so we make sure that we prominently highlight all the key information on our website, and in other written materials we give to people or send to them when they get in touch for the first time (for example a 'frequently asked questions' sheet in our brochure).
 -  We should draw key information to people's attention when they first contact us by phone or email. We should explain at this time (as a minimum) which residents we accept, our pricing and service and any surprising or important terms.
 -  We should also offer to give them more information (for example by post, an attachment to an email or website address, which includes all the key information, prominently highlighted).
 -  We should explain all the key information to people at the start of their first visit to our home (with written information to take away, prominently highlighting the key information). Our staff are trained to provide this information and be able to answer questions about it (as well as the important, additional information, where people want it).
 -  The information must be provided in a clear and simple way so that people who may not have any experience or familiarity with care homes can easily understand and process it.
- c) **Key information** that we should provide on first contact (i.e. at the very start of our engagement with prospective residents and their representatives) and includes:
 - i. **Funding arrangements:** whether we accept self-funded and State-funded residents
 - ii. **Key features of our service**
 -  the type of care needs we cover (for example nursing, residential, dementia)
 -  an overview of the rooms, facilities and services available to residents
 -  the size of the home (for example how many beds it has)
 -  a brief description of our staffing arrangements


iii. **Highlighting particularly surprising or important terms and conditions.** This may include terms concerning:

 how self-funded residents' fees may change during their stay


iv. **Fees and charges**


 an accurate and representative indication of the total weekly fee rates that we typically charge people paying for their own care, for each type of care service offered

 what services are included in our weekly fees and any optional extra services which may need to be paid for separately

 any significant other charges that may be unavoidable for some residents because of their circumstances, such as when staff need to take them to medical appointments

d) **Giving 'important additional information' in good time before we make an offer of a place.** We must give important additional information to potential residents and their families or other representatives when they want or need it, and in good time before we make them an offer of a place in our home. This means that it must be provided, at the latest, by the time they agree to have a care needs assessment. This is because, whilst a person's commitment to a home will grow during their dealings with the home, starting with first contact, once they have agreed to a care needs assessment, they are likely (for practical purposes) to be fully committed to securing a place in our home.

 We must also make sure that what we say in our marketing is true and accurate.

 We must not mislead people by, for example, claiming that our home has an extensive range of daily activities on offer or has an activity coordinator, if this is not true.

i. The important additional information should be easily accessible to people from the start of their research. We should also take active steps to provide this information to people and do so in sufficient time for them to be able to consider it before they agree to have a care needs assessment.


ii. The important additional information should be provided in a timely, clear and accessible way. For example, it should be clearly set out on our website and highlighted in information packs that we send to enquirers.


iii. Where people contact us by phone or online to follow up on their initial interest, we should direct them to this information (for example, on our website) or send it to them if they prefer, and be able to answer questions about it.


iv. Where people visit our home having already made initial enquiries (for example, an initial visit), we should explain it to them at the beginning of their visit, answer any more questions they have, and give them written information to take away.


v. Where people contact us or visit our home for the first time and want to know more at that point, we should give this information to them then and answer any questions they have about it.

vi. The important additional information includes:

 details and length of any trial period

 detailed information on our policies if a resident's funding arrangements change whilst in the home

 how we deal with complaints

 the reasons and conditions for ending the resident's contract (including the notice period)

vii. We also need to make sure that people have been given a copy of our standard TOB and Conditions of Admission, at the latest, by the time they agree to have a care needs assessment, included in our brochure. Our standard TOB and conditions are easy for people to find from the start of their research. For example, they should be easily found on our website and are included in any information packs that we send to enquirers.

viii. Once we have done a care needs assessment and the potential resident has chosen the services they want, we must confirm the final total amount that the resident will have

- to pay as part of our offer. This should include the total weekly fee rate. We should also ensure that the terms of the final offer have been explained and fully understood.
- ix. If information has changed since we first gave it to them, the resident and their families or other representatives must be told and must clearly agree to the changes.

2. Treating residents fairly

We must treat people fairly. When a resident chooses our care home and we enter into a contract with them, our contract terms must also be fair, otherwise we cannot enforce them.

a) *What to remember*

- i. our terms explain all the rights and responsibilities between us and the resident: they are simple, clear and easy to understand
- ii. if a term is unfair, we will not be able to enforce it. A term may be unfair if it gives us more rights than the resident
- iii. terms must be written, negotiated and agreed in a fair and open way
- iv. we must not mislead residents and their families or other representatives, for example, about their right to claim compensation if things go wrong
- v. we must not use our position of power to apply pressure, as this could limit people's freedom of choice
- vi. Our terms cover any conditions, rules or notices which apply to the resident or a third party (such as a guarantor or someone paying a contribution towards the resident's fees).
- vii. They can also include what we say in our brochures, information packs, on our website and in our service user guides, as well as the terms in our contract with the resident.
- viii. Unfair terms could include those that:

- ✗ tie residents to 'hidden' terms that they have not had the chance to read and understand
- ✗ make residents pay a deposit but which give we wide-ranging rights to keep it without justification
- ✗ require any other upfront payments (unless it's an advance payment of their residential fees)
- ✗ require a guarantor without providing full and clear details, upfront, of how they may be responsible if a resident can't pay their fees
- ✗ limit our liability if it's our fault when things go wrong
- ✗ require residents to pay full fees for periods when they are temporarily absent from the home, when we save money by not having them there
- ✗ require fees to be paid for extended periods after a resident has died

b) *Changing our terms, service or fees:* Residents should receive the service they expect and on the agreed terms. They should not receive anything that is significantly different from this. People need to see and understand how changes might affect them, before they sign a contract.

- i. our terms clearly explain why we may need to make changes, which should only be for limited, valid reasons, such as if new health and safety laws have been introduced. Our terms must not allow us to make any changes we like
- ii. the terms are written in a way that enables people to understand how it might affect them
- iii. we have to give notice of any changes. Less than 28 days' notice is unlikely to be fair
- iv. we must give residents a pro-rata refund of any prepayments they have made if they decide to leave before changes happen.
- v. Our terms must set out clearly the circumstances in which fees for self-funded residents may change during their stay and the method of calculating the change. If our contract simply says that any increase will be 'cost reflective', or 'reasonable' or limited to 'unexpected changes', this is unlikely to be fair, since residents will be unable to foresee the changes.
- vi. Whilst it is not the only way to comply with the law, our terms are more likely to be fair where we review residents' fees annually based on a published percentage

- increase in National Living Wage (NLW), set out in our contract with them. The NLW increase is independently verified and transparent and we can explain clearly how it works, so that people can genuinely understand how their fees might change.
- vii. Rarely, major changes to the law could increase our costs significantly. In that case, we would be less likely to take action where any corresponding increase in the resident's fees is made at the annual review, unless already covered by NLW increase we are using.
 - viii. We may also increase a resident's fees at other times, for example where they request and receive a better room, or because their care needs significantly change. We should talk with residents and their family, or other representatives and give them notice before charging any increase and consult relevant professionals where there is disagreement.
- c) **Asking a resident to leave:** Our contract clearly explains the situations when we might have to end a contract and ask a resident to leave.
- i. We must make sure it is only for limited, valid reasons, such as if we cannot meet the resident's care needs anymore even after making changes.
 - ii. We should not ask a resident to leave without consulting with them and their family or other representatives, and any other relevant independent professionals, and after efforts have been made to meet the resident's needs.
 - iii. We should give the resident at least 28 days' written notice to leave. If they are staying with us on a trial period we can give them less, but we must still give them enough time to make other arrangements.
 - iv. We must never ask a resident to leave or take away or restrict their right to have visitors or threaten to do so because they have complained.
- d) **Local Authority funded residents:** The key principles of fairness set out above also apply to Local Authority funded residents.
- i. any agreement that we ask a Local Authority funded resident, their family or other representatives to sign (for example, a residency agreement) does not conflict with the terms of the placement contract we have with the public funding body such as a local authority, Health and Social Care (HSC) Trust, or the NHS.
 - ii. this may be particularly relevant, for example, in relation to top-up fee arrangements and where we accept Continuing Healthcare funded residents.
 - iii. We should also make sure that we have alerted the resident to the options available to them and their implications. For example, where there is a shortfall between our fees and the amount the local authority is willing to pay, we must make sure that the prospective resident and their representatives are aware of the option of making up the difference by arranging to make top-up payments through their local authority.

3. Providing a quality care home service





The heart of our business is to care for those who need it most. It's a legal requirement that we do this properly and give residents the care they need.

- a) If we and our staff do not act with reasonable care and skill, we will be breaching our contract and residents could claim compensation from us.
- b) Sector regulators enforce regulations that we need to follow to provide a quality care home service. For example, we must make sure our building and equipment are suitable and safe and residents are treated with dignity and respect.
- c) If we do not follow the rules and requirements set by regulators, we may also be breaking consumer law. However, compliance with these rules is only an element of our consumer law obligations.





4. Handling complaints

Residents may at times feel that they're being treated unfairly or not getting the service that they want. They have a right to complain and we must make it easy for them to do so and deal with their complaint fairly.

a) *What to remember*

- i. we must never pressure or intimidate someone against making a complaint
- ii. we should have a written complaints procedure which:
 -  is easy to find (for example, highlighted on our website and in our service guide, and in the care home itself)
 -  is easy to understand and use: it should make it possible to make complaints in a variety of ways and information on how to make complaints should be offered, as far as possible, in different languages and formats
 -  ensures that complaints are handled fairly and effectively, without causing upset and worry
 -  is applied consistently across all our care homes, make sure our staff are trained in and understand their responsibilities when reporting complaints, resolving issues, and supporting people

b) *If someone wants to make a complaint we must never:*

-  threaten to restrict or ban their visitors in response to someone making a complaint
-  ask a resident to leave the home because they have made any complaints
-  mislead a resident about how they can exercise their consumer rights
-  We should also encourage and offer residents the opportunity to get extra help to make complaints, where necessary.

c) *Dealing with complaints:* To be effective and fair, we have a quick, simple and streamlined procedure for resolving complaints. For example, we:

- i. set out clearly where and how complaints can be made, and the type of issues our complaints procedure covers (and does not cover)
- ii. try to resolve straightforward concerns at the earliest opportunity
- iii. set out clear and reasonable timescales where we need to investigate the issue in more depth and give a full response within 28 calendar days
- iv. make sure that any investigation is carried out by someone in our organisation who is independent of the concerns being raised, to avoid conflicts of interest
- v. protect the complainant's anonymity as far as possible
- vi. explain to residents and people acting on their behalf how to escalate a complaint to someone more senior in our care home if they do not think it has been dealt with properly
- vii. explain where someone can go (for example, the Ombudsman, CQC, etc.), if they remain unhappy with how our care home has dealt with their complaint
- viii. Keep a copy of the investigation to help us run our care home fairly and comply with the law.

Additional, Detailed Guidance:



Gov.UK: <https://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers/care-homes-and-consumer-law-short-guide-for-businesses>



Gov.UK: <https://www.gov.uk/government/publications/care-homes-consumer-law-advice-for-providers>



Gov.UK: <https://www.gov.uk/government/news/consumer-law-advice-sets-out-obligations-for-care-homes>