



Care Homes and Consumer Law

Short guide

If you run a care home in the UK, you must treat your residents fairly under consumer law.

Consumer law is important because it ensures people are given the information they need to make informed choices, can be confident they will be fairly treated and are able to complain effectively if they have concerns.

This advice applies if you run a care home for people over 65 anywhere in the UK. It covers all care homes, whether residents are State-funded or pay their own fees.

If you are running a care home you need to understand how consumer law affects you. You 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. You should consider the difficult circumstances people might be in and their unfamiliarity with the process of choosing a care home. This will be important if you are ever taken to court, as a judge will consider this.

This advice will help you to follow the law and treat residents and their families or other representatives fairly.

This short guide is only an introduction to helping you run your care home fairly. You should also read our longer advice which has much more detail on how to follow the law.

Read it at: www.gov.uk/cma

Summary

This advice includes guidance on:



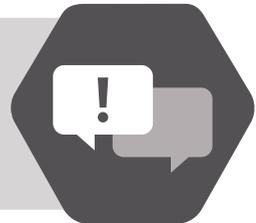
upfront information – indicating what information you should give potential residents and their families or other representatives, when to tell them, and how you tell them

treating residents fairly – what you should do to make sure that the way you treat people and your contract terms are fair



quality of service – how to make sure that you provide your service to your residents with reasonable care and skill

handling complaints – how to make your complaints procedure fair and easy for people to find and use





Consumer law: what you need to know

Consumer law means you have to:

- treat residents and their families or other representatives **fairly** – you must not **mislead** them, **behave aggressively**, or act unfairly towards them
 - this applies **before as well as after** the resident has moved in or signed a contract
 - you must do certain things, like give them **key information upfront**, so they can make the right decisions (eg when researching their choices)
- make sure that your contracts with residents are **fair**
 - you must not put residents at an **unfair disadvantage** by tilting the balance of the contract too much in your favour
- perform your services with **reasonable care and skill**
- 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 (England)
- the Care Inspectorate (Scotland)
- Care Inspectorate Wales
- the Regulation and Quality Improvement Authority (Northern Ireland)

What happens if I get it wrong?

If you don't follow the law, you could face court action. We 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 your contract terms are unfair, you won't be able to enforce them.



Upfront information



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



What to remember

In summary, you 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 your home.

You must give this information:

- 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 your website and during telephone or online enquiries about your home)

Upfront information should be provided to all potential residents and their families or other representatives, **regardless of how their care is being funded**. However, certain information (eg about your weekly fees and any upfront payments) may only be relevant to residents who pay for their own care.

Giving ‘key information’ on first contact

People look for information in different ways, so make sure that you **prominently highlight all the key information** on your website (if you have one), and in other written materials you give to people or send to them when they get in touch for the first time (eg a ‘key facts’ sheet in an information pack, or as an insert in a brochure).

You should draw key information to people’s attention when they first contact you by phone or email and explain at this time, as a minimum, which residents you accept, your pricing (including any upfront payments) and service and any surprising or important terms and offer to give them more information (eg by post, an attachment to an email or website address, which includes **all** the key information, **prominently** highlighted). You should explain **all** the key information to people at the start of their first visit to your home (with written information to take away, prominently highlighting the key information). Your staff should be 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.

Key information that you should provide **on first contact** (ie at the very start of your engagement with potential residents and their families or other representatives) is described in full at section 3 of our main advice and includes:

Funding arrangements

- whether you accept self-funded and State-funded residents

Key features of your service

- the type of care needs you cover (eg nursing, residential, dementia)
- an overview of the rooms, facilities and services available to residents
- the size of the home (eg how many beds it has)
- a brief description of your staffing arrangements

Highlighting particularly surprising or important terms and conditions

This may include terms concerning:

- a requirement for self-funders to show that they can pay for their care for a minimum period
- how self-funded residents' fees may change during their stay
- when the resident might need a 'guarantor' for their fee payments

Fees and charges

- an accurate and representative indication of the total weekly fee rates that you typically charge people paying for their own care, for each type of care service offered
- what services are included in your 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
- details of any upfront payments you ask for (which must be fair), such as any deposit, what this protects against and how it will be protected and refunded

You must also make sure that what you say in your marketing is **true and accurate**. You must not mislead people by, for example, claiming that your home has an extensive range of daily activities on offer or has an activity coordinator, when this is not true.



Giving ‘important additional information’ in good time before you make an offer of a place

You 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 you make them an offer of a place in your 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 your home. The important additional information should be easily accessible to people from the start of their research. You 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.

The important additional information should be provided in a timely, clear and accessible way. For example, it should be clearly set out on **your website** and highlighted in information packs that you send to enquirers. Where people contact you by phone or online to follow up on their initial interest, you should direct them to this information (eg on your website) or send it to them if they prefer, and be able to answer questions about it. Where people visit your home having already made initial enquiries (eg an initial visit), you 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.

Remember, where people contact you or visit your home for the **first time** and want to know more about your home at that point (instead of, for example, making further enquiries later), you should give this information to them **then** and answer any questions they have about it.

The important additional information is described in full at section 3 of our main advice and includes:

- details and length of any trial period
- detailed information on your policies if a resident's funding arrangements change whilst in the home
- how you deal with complaints
- the reasons and conditions for ending the resident's contract (including the notice period)

You also need to make sure that people have been given a copy of your standard contract/terms and conditions for self-funded residents, at the latest, by the time they agree to have a care needs assessment. Your standard contract/terms and conditions should be easy for people to find from the start of their research. For example, they should be clearly signposted on your website and included in any information packs that you send to enquirers.

Once you have done a care needs assessment and the potential resident has chosen the services they want, you must confirm the **final total amount** that the resident will have to pay as part of your offer. This should include the total weekly fee rate and any permissible upfront payments. You should also ensure that the terms of the final offer have been explained and fully understood.

If information has changed since you first gave it to them, the resident and their family or other representatives must be told and must clearly agree to the changes.



Treating residents fairly



You must treat people fairly. When a resident chooses your care home and you enter into a contract with them, your contract terms must also be fair, otherwise you can't enforce them.



What to remember

- your terms need to explain all the rights and responsibilities between you and the resident – they need to be **simple, clear** and **easy to understand**
- if a term is unfair, you will **not be able to enforce it** – a term may be unfair if it gives you more rights than the resident
- terms must be written, negotiated and agreed in **a fair and open way**
- you must not **mislead** residents and their families or other representatives, for example, about their right to claim compensation if things go wrong
- you must not use your position of power to **apply pressure**, as this could limit people's freedom of choice

Your 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).

They can also include what you say in your brochures, information packs, on your website and in your service user guides, as well as the terms in your contract with the resident.

Unfair terms could include those that:

- tie residents to 'hidden' terms that they haven't had the chance to read and understand
- make residents pay a deposit but which give you 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 your liability if it's your fault when things go wrong
- require residents to pay full fees for periods when they are temporarily absent from the home, when you save money by not having them there
- require fees to be paid for extended periods after a resident has died



Changing your terms, service or fees

Residents should receive the service they expect and on the agreed terms. They shouldn't receive anything that is significantly different from this.

People need to **see and understand how changes might affect them**, before they sign a contract.



What to remember

- your terms must clearly explain **why** you may need to make changes, which should only be for limited, **valid reasons**, such as if new health and safety laws have been introduced – your terms must not allow you to make any changes you like
- the term should be written in a way that enables people to understand how it might affect them
- you have to give **notice** of any changes. Less than 28 days' notice is unlikely to be fair
- you must give residents a pro-rata **refund** of any prepayments they have made if they decide to leave before changes happen

Your terms must set out clearly the **circumstances** in which fees for self-funded residents (and also 'private funders' in Northern Ireland) may change during their stay and the **method of calculating the change**. If your 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.

Whilst it isn't the only way to comply with the law, your terms are more likely to be fair where you review residents' fees annually based on a published price index, set out in your contract with them. The index should be independently verifiable and transparent and you should explain clearly how it works, so that people can genuinely understand how their fees might change.

Rarely, major changes to the law could increase your 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 any index you are using.

You 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. You should talk with residents and their families or other representatives and give them notice before charging any increase and consult relevant professionals where there is disagreement. See section 4 of our main advice for more detail.

Asking a resident to leave

Your contract should clearly explain the situations when you might have to end a contract and ask a resident to leave. You must make sure it's only for limited, valid reasons, such as if you can't meet the resident's care needs anymore even after making changes.

You 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.



You should give the resident at least 28 days' written notice to leave. If they are staying with you on a trial period you can give them less, but you must still give them enough time to make other arrangements.

You 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.

State-funded residents

The key principles of fairness set out above also apply to State-funded residents. Make sure that any agreement that you ask a State-funded resident, their family or other representatives to sign (eg a residency agreement) does not conflict with the terms of the placement contract you have with the public funding body such as a local authority, HSC Trust, or the NHS. This may be particularly relevant, for example, in relation to top-up fee arrangements and where you accept Continuing Healthcare funded residents.

You should also make sure that you have alerted the resident to the options available to them and their implications. For example, where there is a shortfall between your fees and the amount the local authority is willing to pay, you must make sure that the potential resident and their family or other representatives are aware of the option of making up the difference by arranging to make top-up payments through their local authority.

Providing a quality care home service



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



What to remember

If you and your staff do not act with **reasonable care and skill**, you will be breaching your contract and residents could claim compensation from you

Sector regulators enforce regulations that you need to follow to provide a quality care home service. For example, you must make sure your building and equipment are suitable and safe and residents are treated with dignity and respect.

If you do not follow the rules and requirements set by regulators, you may also be breaking consumer law. However, compliance with these rules is only an element of your consumer law obligations.



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 you must make it easy for them to do so and deal with their complaint fairly.



What to remember

- you must never pressure or intimidate someone against making a complaint
- you should have a written complaints procedure which –
 - is easy to **find** (for example, highlighted on your website and in your 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 your care homes – make sure your staff are trained in and understand their responsibilities when reporting complaints, resolving issues and supporting people

If someone wants to make a complaint

You 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 complaint(s)
- mislead a resident about how they can exercise their consumer rights

You should also encourage and offer residents the opportunity to get extra help to make complaints, where necessary.



Dealing with complaints

To be effective and fair, you should have a quick, simple and streamlined procedure for resolving complaints. For example, you should:

- set out clearly where and how complaints can be made, and the type of issues your complaints procedure covers (and doesn't cover)
- try to resolve straightforward concerns at the earliest opportunity
- set out clear and reasonable timescales where you need to investigate the issue in more depth and give a full response within 28 calendar days
- make sure that any investigation is carried out by someone in your organisation who is independent of the concerns being raised, to avoid conflicts of interest
- protect the complainant's anonymity as far as possible
- explain to residents and people acting on their behalf how to escalate a complaint to someone more senior in your care home if they do not think it has been dealt with properly
- explain where someone can go (eg the Ombudsman, Care Inspectorate in Scotland), if they remain unhappy with how your care home has dealt with their complaint



Keep a copy of this document to help you run your care home fairly and comply with the law. You should also read the more detailed advice to make sure that you're complying.

You can read the full advice at: www.gov.uk/cma



For more information get in touch by

Phone: 020 3738 6000

Email: general.enquiries@cma.gov.uk

or have a look on our webpage: www.gov.uk/cma