

From: George Lusty  
*Senior Director, Consumer Protection*

16 November 2018

Dear Sir/Madam

### **CMA consumer law advice for care homes for older people**

I am writing to draw your attention to the consumer law advice published today by the Competition and Markets Authority (CMA).<sup>1</sup> This advice can be found on the CMA's care homes [case page](#) together with a short overview guide.<sup>2</sup>

The advice will help you, as a care home provider, understand and comply with your obligations under consumer law when dealing with residents, their families or their representatives.

The advice has been developed with the constructive engagement and support of stakeholders across the sector and following a public consultation. It follows concerns identified during the CMA's market study,<sup>3</sup> that some care homes may be treating residents unfairly and potentially breaking consumer law.

The CMA and other enforcers, such as Trading Standards Services, can take action against care homes that don't comply with consumer law. The CMA has already taken action against some care home providers in relation to the charging of certain upfront fees and charging fees for extended periods of time after a resident's death.

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<sup>1</sup> The Competition and Markets Authority (CMA) is the UK's primary competition and consumer authority. It aims to make markets work well for consumers, businesses and the broader economy.

<sup>2</sup> You can find the advice and our other materials here: <https://www.gov.uk/cma-cases/care-homes-consumer-protection-case>. We have also published some short advice for residents and their family or other representatives on their consumer rights.

<sup>3</sup> In November 2017, the CMA published its findings following an extensive review of whether the care homes sector was working well for older people and their families. Details can be found on the [care homes market study page](#).

## Is the advice relevant to me?

Complying with consumer law is an important and essential part of running a care home. The advice sets out the standards that the CMA expects all residential care homes and nursing homes for older people (over 65) in the UK to follow. It will be relevant to you whether your residents pay their own fees or are State-funded.

## Why is the advice important?

Consumer law gives important protections to residents and their families or representatives, alongside the standards and regulations enforced by sector regulators.<sup>4</sup> It makes sure 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 is especially important because residents may be frail and in poor health and under a lot of pressure and emotional stress.

## What should you do?

As a care home provider, you should:

- (a) Immediately read this advice.
- (b) Carefully consider whether you need to make changes to your contracts and business practices to make sure your care home is complying with the law (which may involve reviewing whether all your charges are fair).
- (c) To support your compliance with the law, consider a wider review of your internal procedures and processes. For example, to make sure that important information is clearly, accurately and prominently provided to prospective residents and kept up-to-date (including on your websites, in written materials such as information packs and user guides, and in response to telephone enquiries), and that fair complaints-handling procedures are being followed.
- (d) Make sure that all customer-facing staff understand these requirements and comply with them, since you will be responsible for their actions.

## CMA's next steps

The CMA's advice is there to help you comply with the law. We will continue to monitor the sector and if we find that care homes are not complying with consumer law, these care homes risk facing enforcement action.

We will also be carrying out a **compliance review**, commencing in **November**

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<sup>4</sup> The Care Quality Commission (England), the Care Inspectorate (Scotland), Care Inspectorate Wales and the Regulation and Quality Improvement Authority (Northern Ireland).

**2019**, to assess the level of compliance by care homes with consumer law, and the progress that has been made since publication of our advice. As part of that review, we will analyse any information and other intelligence that we have received. Where necessary and appropriate, we may also request information from care homes and ask them to demonstrate how they are complying with the law. We will work closely with local authority Trading Standards Services, sector regulators and other compliance partners in holding care homes to account.

If we find serious instances where care homes are breaking consumer law, either through our ongoing monitoring or during the compliance review, the CMA or a compliance partner (such as Trading Standards) may decide to take further enforcement action. This could include taking you to court to get you to change your business practices or contract terms, requiring you to pay money back to residents, or even bringing a criminal prosecution.

Our advice is also relevant to local authorities and other public funding bodies that place residents in care homes. We are letting them know that they should take into account the general principles of fairness set out in the CMA's advice, when contracting with care homes on behalf of residents and when dealing with residents directly.

If you have any queries about this letter, please contact the CMA at [carehomesconsumer@cma.gov.uk](mailto:carehomesconsumer@cma.gov.uk).

Yours faithfully

George Lusty  
*Senior Director, Consumer Protection*

## **NOTES**

- In June 2017, the CMA opened an investigation into a number of care home providers, due to concerns that some of the contract terms and/or practices they use may breach consumer law. Details about the CMA's investigation and action taken to date can be found on the [Care homes: consumer protection case page](#).
- The CMA has powers to enforce consumer protection law. Details about how the CMA uses its consumer powers to address problems in markets, including its approach to compliance and enforcement of consumer law can be found in the guidance document [Consumer protection enforcement guidance](#).