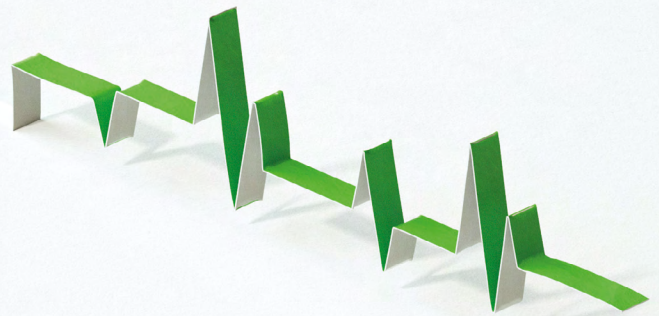


Guidance for Care Homes on Terms and Conditions



In November 2018, the CMA set out detailed guidance for care homes on their consumer protection obligations to residents and prospective residents. Since then the CMA have already taken legal action against one major care home provider (Care UK) for alleged past failings in respect of their practice of charging administration fees.

It seems likely that the CMA will take a relatively tough line in this and other cases particularly involving larger homes and groups although this will probably affect all homes whatever their size or structure over time. It is therefore important that care home operators consider the requirements under the CMA's Guidance and where necessary amend their terms and conditions.

The Guidance which is in addition to the earlier [guidance on post-death charges](#) covers three main areas:

- The initial process for residents to sign up to enter the home;
- Pricing; and
- Other terms and conditions.

Information for prospective residents

The guidance on providing up-front information to prospective residents is detailed and potentially quite onerous. It requires a substantial set of information to be available at the first point of contact either in person, on the telephone, or on the provider's website. This key information needs to cover:

- whether the provider accepts self-funded and state-funded residents;
- the type of care needs provided;
- an overview of the facilities provided including the number of beds and staffing arrangements; and
- the latest inspection rating.

It also requires disclosure in relation to any unusual or important terms and conditions including:

- requirements for a guarantee;
- changes to fees during the stay;
- details of indicative weekly fee rates, not just the lowest figure; and
- clarity about what is included in the weekly fees and what is not, as well as details of any significant additional charges that the home will impose.

Presentation of the key information needs to be followed up with more detail including a copy of any local rules as well as the contract prior to the resident or family agreeing for a care needs assessment. The thinking here is that by that point it is more difficult for the individual or their family to withdraw and they are at any rate to some degree psychologically committed to the home once an assessment takes place. There are also requirements for any changes to the key and further information be notified to the prospective resident.

Fees and charging

There are a number of essential issues which the CMA Guidance raises in relation to charging practices. Firstly they appear to be seeking to effectively outlaw the practice of some nursing homes and chains charging an **upfront fee** in relation to the costs and processes involved in arranging an admission. The CMA approach appears to be that these charges are necessarily unlawful. This is the subject of some debate and is an issue in the case concerning Care UK.

There are concerns about **deposits** and a requirement for clarity as to what they may be used for and requirements to ensure that the money is kept safe either through a trust account or insurance to avoid the resident bearing any risk of insolvency.

There is particular concern over the ability of the home to **change the price** after the resident has signed the contract and whilst there is some acceptance that the home may carry out an annual price review, the CMA approach is to seek to avoid any suggestion of an arbitrary price increase and so far as possible to require a methodology of fee increases to be explicit so that the resident knows in advance what the level of increase will be. This could use a relevant index such as CPIH or a split between CPIH and any increase in the national living wage.

Fairness to residents

The CMA is also concerned about ensuring fairness in connection with liabilities to residents, the ability to restrict visiting or indeed the ability on the part of the home to terminate the contract. There is some concern that the guidance does not adequately reflect the potential difficulties that can arise in care homes but it does indicate a strong consumer law approach from the CMA.

In terms of the level of service there is a little more than an obligation to meet CQC standards but there is a good deal of detail setting out the need to ensure that there is a complaints handling procedure that is easy to find, easy to use and fair.

There is understandable concern about the anecdotal feedback of residents or their families being victimised or being afraid of being victimised if they raise a complaint. Equally we are aware of times when complaints can escalate to the stage where the relationship does break down.

For further advice and support in reviewing terms and conditions please contact:



David
Owens

Partner

Head of Competition

0370 194 1688 | 07770 687620

david.owens@bevanbrittan.com



Vincent
Buscemi

Partner

Head of Independent Health and Social Care

0370 194 3016 | 07917 602217

vincent.buscemi@bevanbrittan.com



Monica
Macheng

Partner

0370 194 5024 | 07813 131978

monica.macheng@bevanbrittan.com

Birmingham | Bristol | Leeds | London

Bevan Brittan LLP | @BevanBrittanLLP | www.bevanbrittan.com | 0370 194 1000