

businesscompanion

trading standards law explained

Part 1: Key principles

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ABBREVIATED TERMS

ADR - Alternative Dispute Resolution

CHP - Complaints handling procedure

CMA's compliance advice or guidance - This refers to the Competition and Market Authority's latest guidance for care homes, called *UK Care Home Providers for Older People - Advice on Consumer Law: Helping Care Homes Comply with Their Consumer Law Obligations*

Resident - When this appears it can also be taken to mean any family member or other representative who may be acting on a resident's behalf. (For example, if they don't have capacity to make a complaint themselves, a family member or other representative may do so)

Safeguarding - Please note, this refers to the definition below, as well as the Scottish term, 'adult support and protection'. It is intended to refer to both terms even when this is not specifically stated

As social services is a devolved issue across the UK, each UK nation has its own rules or system in place to enable good quality services and best practice.

While not all complaints or concerns from your residents, their family or other representatives will be suitable for your care home's complaints handling procedure (CHP), you need to ensure that you and your staff are equipped to handle any complaints that do arise.

There are also general key principles about how to handle complaints, which it is important that you, as a care home owner or registered manager, understand and put into practice in your policies and procedures. You need to ensure that you are acting in accordance with the law and carrying out your obligations to your residents, their families or other representatives. Creating an environment that views complaints in a positive way empowers your staff to understand their duties and enables them to resolve complaints wherever possible, which can help to build confidence and trust between your staff and residents.

Key principles of complaint handling

Placing the expectations of your residents, their family or other representatives at the heart of your complaints handling procedure is very important. Reports such as *My Expectations for Raising Concerns and Complaints*, which was a collaborative piece of work published by the Parliamentary and Health Service Ombudsman, Healthwatch England and the Local Government Ombudsman in November 2014, suggests that it is helpful to adopt a user-led vision for handling concerns and complaints. While this wasn't specifically written for the UK as a whole, this approach may be useful for all care home owners and registered managers to consider. It can be broken down into five main stages, and some example questions for each stage are given below.

1. When a resident, family member or other representative is considering making a complaint

- do they know they have a right to complain and how to make a complaint?
- would they feel confident that their position in your care home or the quality of care that they receive will not be affected if they make a complaint?
- would they feel confident that they would not be treated less favourably (by placing a ban on their visitors, for example) because they made a complaint?

2. Making a complaint

- would residents feel able to raise any concerns or complaints with any member of your staff?
- have you trained all your staff on your CHP and how to deal with complaints?
- is there a range of accessible ways available to make a complaint, to ensure your residents are not disadvantaged? For example, can they complain in person, over the phone, via email or letter? Is this information clearly communicated?

3. Staying informed

- will residents be kept up to date throughout the process?
- will their complaint be specifically addressed?
- can they keep their complaint confidential and anonymous if they wish?

4. Receiving outcomes

- will residents receive an outcome within a reasonable time, taking into account the nature of the complaint and its complexity?
- will the outcome be communicated in an appropriate manner, by an appropriate person and at an appropriate time?
- are a resident's views taken into account when deciding on a suitable outcome, or their family member's or other representative's if they made the complaint on a resident's behalf?

5. Reflecting on the experience

- would residents feel that their complaint had been handled fairly?
- would they feel confident to raise a complaint again if necessary and encourage other residents to do the same?
- do they understand the importance of complaints in helping to improve the services of your care home?

To help you incorporate these principles into your complaints procedures and processes, and to view a checklist to review your progress, read the general, supportive guide to this Business Companion booklet, Writing your CHP checklist, which can be found at /sites/default/files/BEIS_Care_Homes_Complaints_CHP_Checklist.pdf

Important definitions

To ensure your staff and residents know how to use your CHP correctly, it is important that they know what the following definitions mean.

What is a complaint?

As all four nations have their own systems in place for running social services (and so in turn their own interpretations of what constitutes a complaint) the CMA has suggested that a complaint is: "... any expression of dissatisfaction that a care home or member of staff has not met the standard people would expect or about the care home's action or lack of action. It also covers a 'concern' that people may have which never becomes a formal complaint."

Providing residents with a non-exhaustive list of examples of complaints in your CHP will help them to understand what a complaint is. Examples of complaints include:

- failure or refusal to provide a service
- not providing a service within a reasonable time
- the attitude of, or treatment by, a member of staff

Complainants may not always use the term complaint, but comments, suggestions and other forms of communication can be complaints even if they are not identified as such by the complainant.

- it is important to ensure that you also set out any issues that are not covered under your CHP. For example, the following are unlikely to be considered complaints:
 - an initial request for a service
 - a request to explain a document

Safeguarding issues

adult or child is at risk of abuse or neglect. Abuse can include a single or repeated act, or lack of appropriate action, which causes harm or distress to another individual or violates their human or civil rights. Neglect is where appropriate and adequate care and support is deliberately withheld or is not provided. Examples of safeguarding, or adult support and protection issues, can include:

- financial abuse
- physical abuse
- psychological abuse including threats of harm or abandonment, humiliation, restricting visiting rights and coercion
- sexual abuse
- discriminatory abuse
- neglect or acts of omission

Where these types of issues are identified, the relevant safeguarding / adult support and protection policy must be followed. Your care home's CHP would be placed on hold until the procedure has concluded.

Criminal offences

A crime is an unlawful act that is punishable by a state or other authority. In a care home scenario, criminal offences can include:

- theft
- fraud
- physical abuse / assault
- unlawful imprisonment
- ill treatment or neglect of someone who lacks mental capacity

When dealing with complaints that fall outside your CHP's remit, it is important that the relevant policy is followed and that your CHP is put on hold until this has been dealt with formally. This may involve contacting the police and other relevant bodies, so staff should be trained on how to identify whether a criminal offence is involved and what to do in such situations. Some issues may also be both a safeguarding/adult support and protection issue, and a criminal offence.

To help you understand the spectrum of different concerns and which organisations would need to be contacted, see our flowchart opposite, which can be printed off and placed on your staff room wall if desired.

Advocacy and advice

Ensuring that residents are given support and advice on how to access advocacy services will help you to comply with your legal obligations. Advocates can be people who may be available to assist residents to bring a complaint, such as a friend, relative or independent advocacy service. They can be an important aid in helping residents overcome barriers in making a complaint or offering feedback to your care home.

Some advocacy services are required by law - for example, in Scotland the Mental Health (Care and Treatment)(Scotland) Act 2003 and the Care Act 2014 require that certain residents have access to independent advocacy services.

In Wales, regulations developed under the Regulation and Inspection of Social Care (Wales) Act 2016 require that certain information about the availability of advocacy services is included in the written information given to residents, and arrangements need to be put in place to ensure access to relevant advocacy services or self-advocacy groups.

Advocates can help residents with things like writing letters, attending meetings and helping residents to make decisions. More details about advocacy services for your region can be found in 'Resources and further reading'.

To help your staff understand the terms detailed in this chapter so they know how to apply your CHP, and to assist with assessing their knowledge and understanding of other, broader content contained in this booklet; you can download a copy of our Care homes complaints Q and A training tool at /sites/default/files/BEIS_Care_Homes_Complaints_Q%26A.pdf.

The CMA Says

It is important to ensure that everyone including, residents and their representatives and your own staff, know when a concern or complaint is a safeguarding or criminal issue, and what must happen.

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