

businesscompanion

trading standards law explained

Part 2: Consumer Law

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Before we get into the detail of how your CHP should work and what it should contain, it's important that you understand the rights and principles set out in consumer law that apply to complaints, and your obligation to ensure that residents, potential residents and their representatives are treated fairly.

You are responsible for practices carried out by your staff, and anyone acting on your behalf or in your name, so it is important to have clear processes in place to reduce the chances of breaching consumer law when dealing with complaints.

An overview of the main consumer laws you need to be aware of and how they apply to complaints are outlined below.

1. Consumer Contracts Regulations

The *Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013* (CCRs) apply to contracts between traders and consumers, and set out the pre-contract information you should give and make available to consumers before they enter into a contract with you. This information should be clear and easy to understand. One of the information requirements is that you provide a CHP, if applicable. In this instance, having a CHP is applicable.

Other information requirements include details of any relevant codes of conduct that you are bound to follow, as well as any relevant out-of-court complaint and redress mechanisms that apply, and how a resident can access these services. Ensuring you provide all pre-contract information to potential residents or their representatives before they sign a contract with you is likely to help you when dealing with complaints, and could even reduce the number of complaints your care home receives. More detail about these regulations can be found in the Business Companion Business in Focus guide, 'Fair trading for care homes'.

2. Unfair trading regulations

The *Consumer Protection from Unfair Trading Regulations 2008* (CPRs) prohibit traders from using unfair practices in their dealings with consumers. The CPRs apply to all care homes and your dealings with

potential and existing residents, their family and other representatives.

The CPRs apply to any commercial practice you engage in with a potential or existing resident, either before, during or after they enter into a contract with you. The information you provide on your website, advertising materials and any information that is given to a resident by phone, email or face to face – as well as your CHP – are all considered commercial practices.

Misleading actions and omissions

The CPRs prohibit unfair commercial practices, including misleading actions and misleading omissions.

A misleading action occurs when a commercial practice contains false information about a wide range of things listed in the CPRs, or if its presentation is deceptive – even if the information is factually correct – and causes, or is likely to cause, the average resident, family member or representative to make a decision they would not have made otherwise.

This includes information relating to your prices and how they are calculated, the main characteristics of your services – such as your accommodation and facilities – their need for a particular service, or your experience or qualifications. It is therefore important to ensure the information you supply is accurate and clear, as this will help potential residents, family members or their representatives to make an informed decision about whether your care home is right for them, and can reduce the number of complaints your care home receives.

Misleading omissions occur when your practice omits or hides ‘material information’ that the average resident, family member or other representative needs to make an informed decision, or where you supply the information in a way that is untimely, unclear, ambiguous or unintelligible. The practice must also cause, or be likely to cause, the average resident, family member or other representative to make a different transactional decision as a result. ‘Material information’ means information that the consumer needs to make an informed transactional decision and generally any information required to be given by law. This information must be provided to consumers when they need it – whether or not they have asked for it.

Aggressive commercial practices

Aggressive commercial practices are those that intimidate or exploit residents through harassment, coercion or undue influence, significantly impairing the average consumer’s ability to make free or informed choices, and which cause, or are likely to cause them to take a different transactional decision as a result. Aggressive practices include physical and non-physical pressure, such as psychological pressure, the use of threatening language, or taking advantage of a consumer’s position or vulnerability – for example, by threatening to evict the resident or impose a visitor’s ban unless they withdraw a complaint.

Transactional decisions

Under consumer law, the concept of ‘transactional decision’ should be interpreted broadly. It covers a wide range of decisions that are open to potential residents and their family or other representatives – including making a decision to raise or pursue a complaint.

Banned practices

Aggressive commercial practices are those that intimidate or exploit residents through harassment, coercion or undue influence, significantly impairing the average consumer's ability to make free or informed choices, and which cause, or are likely to cause them to take a different transactional decision as a result. Aggressive practices include physical and non-physical pressure, such as psychological pressure, the use of threatening language, or taking advantage of a consumer's position or vulnerability – for example, by threatening to evict the resident or impose a visitor's ban unless they withdraw a complaint.

The CPRs set out a list of 31 specific practices – sometimes referred to as 'banned practices' – that are considered unfair in all circumstances, whether or not they affect a person's ability to make a decision. Examples of banned practices are likely to include:

Falsely stating you are signed up to a trade body's code of conduct

Making persistent and unwanted calls, emails or faxes, or visiting a resident's home, or the homes of their family or representatives, and refusing to leave – except in circumstances and to the extent justified to enforce a right under a contract

You have a general duty to trade fairly

The CPRs also set out a general duty to trade fairly. You must not engage in practices that fall below the requirements of professional diligence and materially distort the economic behaviour of the average resident, family member or other representative. This means you have to act with the level of care and skill expected of a care home operator that is acting honestly and in good faith.

3. Other consumer law

There are other consumer laws that apply to consumer complaints and the rights that care home residents have. For example, Part One of the Consumer Rights Act 2015 sets out the right for residents to receive a service that is carried out using reasonable care and skill and within a reasonable time. The Act also sets out remedies that residents may be entitled to if you breach your contract with them. Part 2 of the Consumer Rights Act ensures that care home contract terms, including those terms relating to complaints handling, are fair. If a term is found by a court not to be fair, it will not be legally binding on a resident.

Professional diligence

The term 'professional diligence' means to act with honest market practice and in good faith towards your residents, their family or other representatives, using the standard of special skill and care expected of you in your sector. Sector-specific laws, regulations and the standards or guidance published or enforced by your sector regulators may inform the standard of professional diligence that you are expected to meet.

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