

## Consumer Rights Act 2015

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There are two main parts to the Consumer Rights Act 2015 (CRA). Part One sets out rules relating to the supply of goods, services and digital content to consumers, while Part Two deals with the law relating to unfair contract terms and notices. For example, the CRA sets out information such as:

- your responsibilities to consumers, covering the services that you supply to them and also any goods that you may supply as part of your service
- your residents' rights as a consumer
- actions that a consumer can take if you infringe consumer law

The CMA considers that running a care home with reasonable care and skill will require you to ensure that residents' needs are met in a caring environment. For example, there must not be carelessness or a lack of thoroughness on your part.

### CRA Part One: Resident's rights - service contracts

The CRA says that, when providing your service, you have a duty to make sure that:

- the service is carried out with reasonable care and skill. For example, you should treat residents with dignity and respect and involve residents and their representatives in decisions about their care and treatment
- anything that is written or said to the resident or their representatives about you or your service by you or on your behalf becomes part of the contract when that information is relied on, either before or after entering into a contract
- where the price for your goods and services has not been agreed, or information on the cost and how it will be calculated has not been included in the contract, the price must be reasonable
- the service is carried out within a reasonable time, where no timeframe has been agreed

## Remedies when service-contract rights are not met

If your responsibilities under consumer law for service contracts are not met, the CRA sets out remedies that a resident is entitled to, which can include (where relevant) repeating the service, or giving the resident a price reduction.

A price reduction can be up to 100 per cent of the price a resident paid for your service. A resident, their family or representatives may also have the right to claim damages to cover any financial losses they may have suffered instead of (or as well as) trying to obtain a price reduction or repeated service.

## Residents' rights - goods contracts

If you supply any goods to residents as part of the services you offer, such as meals, they will also have the right for those goods to be:

- **of a satisfactory quality.** In law, goods must be of a standard that a 'reasonable person' would find satisfactory. Satisfactory quality takes into account factors such as the price paid and the safety and durability of goods. For example, any food served to residents must be safe and not be past their use-by date
- **fit for a particular purpose.** Goods must be suitable for being used in their normal way, or a way that the resident has indicated they want to use it for, such as making sure food served to a diabetic resident is fit for them to consume
- **match any description, model or sample.** Your food menu must match the food actually being served to residents
- **installed correctly**

## Remedies available under goods contracts

If any goods supplied to your residents do not meet the requirements for goods contracts, they may be entitled to:

- reject the goods and seek a full or partial refund
- seek a repair or replacement
- seek a reduction in the price they have paid

They may also be able to claim other remedies (such as damages) for any costs incurred that are not covered by the remedies set out in the CRA.

### The CMA says...

The regulatory requirements enforced by your sector regulator and their guidance are likely to be relevant when considering whether you are meeting your obligations under consumer law, since they indicate the level of care and skill that is considered reasonable for everyone operating a care home to exercise. However, compliance with these regulatory requirements is only an element of your obligation under consumer law to ensure that the services you provide to residents are performed with reasonable

care and skill. It is not the only measure of whether you are meeting this consumer law obligation.

## **CRA Part Two: Unfair contract terms**

Part Two of the CRA sets out the law on unfair consumer contract terms and notices. You must ensure that your consumer contract terms and notices are fair and are not weighted too much in your favour. If this were to occur, it could cause a 'significant imbalance', to the resident's detriment.

### **The fairness test**

The CRA applies a test of fairness to contract terms and notices between you and your residents, which takes account of what the contract is about, all the circumstances existing when a contract was agreed, all the other terms of that contract and any other relevant contract.

#### **For more information**

To help you comply with your consumer law obligations when writing terms and conditions, there is a practical checklist on page 34 of this booklet. It is also important to train your members of staff who may deal with enquiries from a potential resident, their family or representative, to ensure they understand the terms, can explain them clearly and answer any questions. Page 32 of this guide gives an overview of consumer law to assist with training your staff.

### **The 'grey list'**

The CRA contains a list of terms that may be regarded as unfair, known as 'the grey list'. This also applies to terms that have the same purpose or effect as terms on the grey list. However, these terms are not automatically unfair, as all the circumstances have to be taken into account. Also, terms that do not appear on the grey list can still be unfair if they fail the fairness test. The grey listed terms cover issues such as:

- residents being denied full redress if things go wrong. This includes terms that restrict some of the rights and remedies covered in this guidance
- residents unfairly losing prepayments after the contract comes to an end
- terms that allow you to arbitrarily vary terms of the contract, such as raising your fees without a valid reason which is specified in the contract
- terms that allow disproportionate financial sanctions against residents for terminating their contract with you

Any term that gives you as a care home owner or registered manager the freedom to make significant changes at your sole discretion, or on very short notice, is likely to be unfair under consumer law. All terms and notices you use must be fair.

## **Consumer notices**

For ease, this booklet refers to your consumer contract terms throughout, but the fairness requirements of the CRA also apply to your consumer notices. A consumer notice is wording that does not necessarily form part of your contract with a resident, but sets out rights and obligations between you, or which attempts to restrict your liability to a resident. Notices can include statements made in writing or orally, such as information published on your website, placed in residents' rooms and information in welcome packs and brochures, or even what a staff member might say to a potential resident before they agree to move into your home. These statements are treated in the same way as if they were a term in your contract with residents.

The wording used in your terms should be simple, clear and informative, so that residents and their representatives can genuinely understand and assess their rights, obligations and the financial consequences for them, before making decisions.

## **User-friendly, clear and unambiguous terms**

Having clear terms and conditions that can easily be understood by your residents will make it easier for them to decide if your care home is right for them and will save you time, by reducing the amount of questions that potential residents need to ask. Giving a potential resident and their representative all the important information they need to make an informed choice will also help them to understand what their rights and obligations are under the contract, and also what your rights and obligations are, too. This should reduce the likelihood of disputes.

## **Blacklisted terms**

Terms that allow you to exclude or restrict your liability to residents when you are at fault are likely to be considered unfair. Residents have rights under consumer law, such as the right to receive a service that is provided with reasonable care and skill. In law, if these rights are breached, the resident is entitled to a suitable remedy. Remedies can include the right to seek damages, or to have a reduction in the price the resident has paid for their service.

In addition to the grey list, the CRA says terms that take away or reduce certain consumer rights under the Act, or which try to prevent them from seeking a remedy they are entitled to in law, are not binding on consumers ('blacklisted'). Blacklisted terms are considered automatically unfair and you cannot rely on them or enforce them against your residents. For example, you cannot restrict your liability for death or personal injury caused by the negligence of you or your staff.

## **The CMA says...**

A term that is potentially surprising or particularly difficult to understand is likely to require greater prominence in the upfront information that you provide to potential residents and their representatives, compared to terms that are easier to understand.

A term is likely to be considered unfair if it puts the resident or their representatives at an unfair disadvantage. The law applies a 'fairness test' that starts by asking whether the wording used tilts the rights and responsibilities between the resident and you too much in your favour. An important question to ask is whether you think a resident who is properly advised, and whose interests you are taking into account, would actually agree to the term.

If your terms and conditions are not transparent, this does not automatically make them unfair. However, transparency of written terms is a requirement of the CRA and if your terms have more than one meaning, the courts will apply the meaning most favourable to the resident.

Terms that specify the main subject matter of your contract, or set the price of your services, cannot be assessed for fairness, provided that they are transparent and prominent. Where they are not, they can be assessed for fairness. Terms that must be included because they reflect mandatory legal provisions cannot be assessed for fairness either.

### **For more information**

To help you avoid terms that exclude or restrict your liability to residents when you are at fault, a practical checklist and an example of a term more likely to be fair can be found on pages 34 and 35 of this booklet.

[< Treating residents fairly](#)

[> Trading fairly: an introduction](#)

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