

## Trading fairly: an introduction

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You must ensure that your standard terms and conditions are brought to the attention of a potential resident and their representative in good time before you make them an offer of a place; this means that they should be provided, at the latest, by the time they agree to have a care needs assessment. This gives them a real opportunity to read and understand their rights and responsibilities under the contract, before being bound by it, so that they can make an informed decision about whether or not your home is right for them. Your terms should therefore be easy for people to find - for example, your standard contract for self-funded residents should be clearly signposted on your website and included in information packs you send to enquirers.

You should consider where, how and when the information about your home and its services is provided to a potential resident and their representatives, to make it as easy as possible for them to read and understand the terms they are agreeing to. The [Care home communications booklet on this website](#) sets out what information should be supplied and when it should be given.

It is important that potential residents and their representatives have the chance to read and understand any terms that apply to them in good time before you make them an offer of a place in your home. Terms that bind residents to contract terms they have not had a reasonable opportunity to become familiar with or understand are likely to be unfair under consumer law, and may not even form part of the contract.

Some scenarios that could be considered unfair are explored on the following pages.

Before you make a potential resident and their representatives an offer of a place at your home, it's worth bearing in mind what steps they will take along their 'care home journey'.

### Step 1: Creating a shortlist

Typically, a person's first step in finding a care home involves researching and shortlisting available homes in a particular place.

### Step 2: Visiting your home

If someone likes what they've learnt about your home so far, they will usually arrange a visit to follow up on their initial interest, before making a final decision about whether or not to commit.

### **Step 3: Agreement to have a care needs assessment**

The first two steps may culminate in an agreement to have a care needs assessment, by which time the potential resident will, for all practical purposes, have become fully committed to your home.

### **Step 4: Confirmation of final offer**

Once the prospective resident has decided to go ahead with a particular home, they will have a care needs assessment and select the particular services they want to receive. Following this, and provided you're happy your home can cater for a person's needs and that your costs can be met, you confirm the offer of a place to the resident or their representatives, including the final, total amount that the resident will need to pay.

### **Step 5: Resident accepts final offer**

If the resident is happy with everything you've discussed, they will accept your final offer and sign a contract.

#### **In 'good time'**

Providing important, additional information in 'good time' means that it must be provided (at the latest) by the time a potential resident, family member or representative agrees to have a care needs assessment. This is because, whilst a person's commitment to a home will grow during the course of their dealings with the home, starting with their first contact, once they have agreed to a care needs assessment, they are likely (for all practical purposes) to be fully committed to securing a place in your particular care home.

### **Where terms may be 'hidden' in different documents**

Where your terms are deemed to be accepted by a resident signing a contract, but linked terms are not all contained in one document (instead being located in several documents that are in different places, or are given to a potential resident or their representatives at different times (making them difficult to find and review)) this is likely to be considered unfair. The terms that are not actually presented to the consumer might not be incorporated into the contract at all.

### **When you ask for payments before an assessment or a place is offered**

Where you require a potential resident or their representatives to make a payment to you before their care needs assessment is completed, or before you have clearly offered them a place which is then accepted, this is likely to be considered unfair. In these circumstances they will not be aware of key terms of the contract, such as the cost of their residential fees, and they will not have had a reasonable opportunity to consider these other terms.

The CMA says it would consider a requirement for a potential resident or their representatives to make a payment before a care needs assessment is done or a place has been offered and accepted as unfair (even if the money is refundable) because it is likely to restrict the potential resident's ability to shop around, and creates a disproportionate sense of obligation on them to proceed with the transaction. The CMA also fails to see the business need for taking such sums at this stage. See

the CMA's advice for more detail about its concerns around upfront payments.

## When you declare terms binding before a contract has been signed

Where terms are said to be binding on a resident even if a contract has not been signed, this is also unlikely to be considered fair.

### Getting it wrong

The following are examples of terms that are likely to be considered unfair under consumer law:

*These terms and conditions, together with the attached admission agreement and the policies provided in your welcome pack upon admission, form the agreement governing our relationship for the duration of your stay at our home.*

*This contract consists of this document together with all preceding and following correspondence, provider information and informal promises, including the contents of any brochure, booking details, service users handbook and service user.*

[< Consumer Rights Act 2015](#)

[> Trading fairly: changing your terms](#)

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