

# businesscompanion

## trading standards law explained

### 'Key information': A detailed guide

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'Key information' about your home and its services should be given to a potential resident and their representatives when they first make contact - that is, when they first visit your home, make an initial phone call or email enquiry, visit your website or attend an open day. The information should be clear and accurate, and easy to understand and engage with. Given its importance, it should be given particular prominence and be actively brought to the attention of, and explained to, potential residents and their representatives at the earliest possible opportunity.

Examples of the key information you need to supply are explored below.

#### **Key funding arrangements**

It is important to confirm the type of funding arrangements you accept. This means whether you accept residents who are:

- funding their own care
- receiving funding from their local authority
- receiving other state funding, such as from the NHS

Where you accept residents who are funded by their local authority, you must explain, upfront, whether a top-up fee may be required if the funding offered is less than your charges.

The information you give about your staffing arrangements should be consistent with the information you are already required to supply to your regulator, to demonstrate that your staffing arrangements are sufficient to meet residents' needs.

## Displaying your latest inspection rating

Where applicable, you should display your current overall inspection rating (in Scotland known as grades) from your regulator, and a website address or link to your most recent performance assessment inspection report, for example, on your regulator's website.

In England, if you have a Care Quality Commission performance assessment you must display your rating conspicuously and legibly on your website (if you have one) and at each care home you run, according to reg.20A of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014. Inspection ratings should be on the main home page of your care home's website. See [www.cqc.org.uk/guidance-providers/ratings/display-ratings](http://www.cqc.org.uk/guidance-providers/ratings/display-ratings)

## The Consumer Contracts Regulations 2013

Under consumer law, information about the main characteristics of your service will be binding on you as a term of the contract where the resident accepts an offer of a place in your home.

If this information changes before the contract is agreed, you will need to get the resident's express agreement to the change.

This is a requirement of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013. To find out more, see the *UK Care Home Providers for Older People; Advice on Consumer Law: Helping Care Homes Comply with Their Consumer Law Obligations* booklet.

## Key features of your service

As part of the key information you should provide potential residents and their representatives with an overview of the main characteristics of your service. Key features you should highlight include:

- the specific care needs your home is registered, or able, to cater for. This could include nursing, residential, dementia, end of life, respite, palliative, continuing, frail or rehabilitation care services
- what type of accommodation/rooms (as well as any services they include) are available to potential residents in your home. For example, en-suite, single, shared, furnished or unfurnished rooms, and whether they contain a television, telephone and internet access
- the facilities and services you offer, including activities and entertainment such as a cinema room
- the size of your home - for example, how many beds it has
- a brief description of your staffing arrangements, and how they meet residents' needs and assure quality of care. This is likely to include information about:
  - the number of staff working in the home and their qualifications - for example, qualified nurses and care assistants; the planned number of staff on a day-to-day basis; for example, your typical duty rota during the daytime, night-time and weekends where these differ; and how they will be deployed across the home; for example, where the home has more than one floor / unit
  - you should make clear that the specific level of care each resident will receive will depend on an assessment of their individual care needs to establish their level of dependency
  - where applicable, explain how you supplement staffing to ensure residents' needs are met - for example, through the use of automated monitoring technology

## Sector regulations in Wales

In Wales, the Care Inspectorate has issued guidance for compiling a Statement of Purpose that states information about staffing arrangements should include the numbers and qualifications of specified staff

(including registered nurses) at a home, and the planned number of staff on a day-to-day basis the service will deploy. This is one example of how sector-specific laws can differ between each of the devolved nations in the UK.

This information can be found in the 'statement of purpose', under the Regulation and Inspection of Social Care (Wales) Act 2016.

## Getting it right

Here's a good example of how to supply information about your staffing arrangements:

*Our residential floors have capacity for a maximum of 15 residents each. Usually our staffing levels consist of three experienced carers (with NVQs in health and social care), on each floor during the day and two experienced carers at night time.*

*Our dementia nursing floor caters to a total of 10 residents and is staffed solely by three registered nurses during the day and two registered nurses at night time.*

*All floors are managed by a registered nurse, who assesses when extra carers may be needed if your care needs change.*

*We have a 24-hour nurse call system installed in all our residents' rooms and make use of automated monitoring technology to check residents' breathing and movements while asleep, which alerts nursing staff at a central monitoring location to any possible issues that could require staff to intervene. We have a dedicated activities co-ordinator who organises internal and external activities for all residents to enjoy.*

*Please note that the actual level of care that each resident will receive in our home will depend on their individual care needs.*

## 'Surprising' or important terms and conditions

A potential resident and their representatives are unlikely to be used to dealing with care homes and may find some of your terms and conditions surprising simply because they would not expect them and know to look for them.

Remember, the information you give should be prominent, clear and accurate, and easy to understand and engage with. Some examples of terms and conditions that a potential resident and their representatives may find surprising, or that are otherwise important, are explored below.

1. A condition of moving into your home is that a potential resident who is funding their own care must confirm that they are able to pay their own fees for a minimum period, or agree to a financial assessment.

It is important that you clearly explain what your policy is on accepting a resident who doesn't meet your minimum funding criteria. For example:

- will the potential resident be refused admission to your home?
- will a 'guarantor' be required?
- is the decision at the discretion of your care home manager?

It is important to also explain what the implications are likely to be if, during this agreed minimum period, a resident becomes eligible for state funding. For example, if the local authority fee rate is not sufficient, or a top-up payment cannot be arranged through the local authority:

- whether you can ask the resident to move to a less expensive room
- whether you can terminate the contract and ask them to leave

2. You should explain to a potential resident, who is funding their own care, the detail of how and why their fees may change after they have moved into your home.

## Guarantor

Another term that a potential resident and their representatives may find surprising is the need for a guarantor.

A guarantor is a third-party sponsor who agrees to take financial liability if a resident who is funding their own care stops paying their fees.

It is important to explain the role of a guarantor and what is expected of them. This should include the circumstances in which a guarantor may be needed, when they may become liable, what their responsibilities will be, the fees or charges they may be required to pay, and the potential extent of their liability.

A guarantor is different from a 'third party' (such as a family member or representative) who has agreed to pay a 'top-up' contribution to allow a resident to accept a place in the home of their choice.

### The CMA says...

'Surprising' means any term that a potential resident, family member or representative would not be expecting, or know to look for. A term may also be surprising if it is not consistent with general industry practice.

Surprising terms include where an upfront payment such as a deposit is required, or if fees continue to be payable after the death of a resident.

Simply highlighting or drawing attention to a surprising or important term does not make it fair. Your terms must be fair under the Consumer Rights

Act 2015. To find out more, see the *UK care home providers for older people; advice on consumer law: helping care homes comply with their consumer law obligations booklet*.

## Fees, charges and payments

Under consumer law, a potential resident who is paying for their own care, or their representatives, must know, upfront, how much they are likely to pay each week for your services, depending on their choices and circumstances.

For each type of care service you offer, rather than just a 'from' price, you should provide the full range of your fees (inclusive of all taxes) that accurately represent what you would typically charge a new resident.

## Indicative fees

When it comes to providing information about your indicative fees in particular, you should ensure that:

- you make it clear that your indicative fee information relates to residents who pay for their own care
  - for example, by using a clear heading
- you provide the full range of fees you typically charge, rather than just a 'from' price, and that the range accurately represents what you typically charge new residents

For example, if the minimum weekly fee shown is for one exceptionally small single room in your care home (and thus much lower than the fees charged for the rest of the rooms) this is likely to be considered misleading.

- you give clear, indicative fees for:
  - the different type of rooms the fees apply to - for example, single, shared or en-suite
  - the range of care services available, such as residential care, nursing care, specialist dementia care and respite care. For respite care, for example; this may be a flat fee charged at a daily rate

Where appropriate and applicable, you should make clear that the indicative fees quoted are for guidance only and subject to an individual care needs assessment, as well as the type of room and services chosen.

## Getting it right

Here's a good example of how to present information about your indicative fees for a resident who is funding their own care.

*Indicative prices / weekly fees guide for self-funded residents residential care:*

*Single room: The weekly fee charged for self-funding residents is currently from £800 ranging to £900 per week.*

*Single room with en-suite: The weekly fee charged for self-funding residents is currently from £900 ranging to £1,000 per week.*

*Shared room (per person): The weekly fee charged for self-funding residents is currently from £600 ranging to £700 per week.*

*Prices quoted are for guidance only. All prices are subject to an individual care needs assessment and the type of room and services chosen.*

## The CMA says...

If a resident needs to attend a planned hospital or GP appointment, a family member or representative should be notified in advance, so they can accompany them if possible.

Make sure that, where a resident who needs to attend medical appointments and qualifies for transportation funded by the NHS, this is arranged, and the resident isn't charged for this transport service.

## Services that are included in your weekly fees

Charges that are mandatory for all residents and cannot reasonably be avoided should be included in your headline fees and recovered in your weekly fees.

You should also state which services are included in your weekly fees, together with any optional, additional services and extras that are not included, and may need to be paid for separately once the resident has moved into your home. For example:

- accompanied hospital visits
- hairdressing
- chiropody
- medical supplies
- toiletries
- telephone charges

Any additional services / charges quoted should be optional. This means a potential resident and their representatives can genuinely choose whether or not they wish to pay for them.

Certain additional costs may be unavoidable for some residents, depending on their circumstances - for example, if you charge residents for being accompanied to hospital appointments (where their relatives and friends are unavailable). You should provide details of what the actual additional costs will be, or are likely to be. Where the nature of the service means the charge cannot be calculated in advance, information should be supplied showing how it will be calculated.

Depending on the choices a resident makes, you need to make it clear what additional charges will be incurred for everyday items / services - for example, hairdressing, toiletries or medical supplies.

Where you have a current price list for additional charges / extras, you should inform the potential resident and their representatives where they can find it. This could be displayed at the reception desk of your home, and be accessible through a prominent link on your website.

You also need to supply information about the services a resident (if they are eligible) may receive from the NHS for free, while making it clear what other services they will be charged for.

### Indicative fees: NHS-funded nursing care contribution

Some residents may be eligible for NHS-Funded Nursing Care payments (in Northern Ireland this is known as a Health and Personal Social Services payment). In these circumstances, you must make clear the relationship between the indicative fees you have quoted for residents who pay for their own care and the nursing care contribution funded by the NHS. This relationship may be determined by the relevant policy guidance in each country.

For example, in England you could say: "Your nursing care may be funded in part by a contribution from the NHS, known as Funded Nursing Care. In 2018/19 this was £156 per week. If you are eligible for this contribution, it will be paid directly to us by the NHS and deducted from the weekly fees quoted when paid."

For more detailed guidance on Funded Nursing Care payments, read Chapter Four of the CMA's advice, UK care home providers for older people; advice on consumer law, which is available on the [CMA's website](#).

## Information about other upfront payments

The information you give to a potential resident and their representatives about any other upfront payments you require means they will be aware of what costs they need to pay in advance. You should not require an upfront payment which is not a deposit or an advance payment of regular weekly fees.

Where this is a fixed sum, you must give the exact amount or, where the sum is based on your weekly fees, you must give an example of what a typical amount would be. This could be reflected, for example, by giving the range of deposits taken for the different services you offer, or the average deposit taken.

Examples of information about other upfront payments include:

- the amount of any weekly fees payable in advance of moving in (for example, four weeks of fees), what they cover, and how fees are refunded if the potential resident decides not to move into your home
- the type and amount of any deposit you may require (for example, a security deposit or a reservation deposit) its purpose and the risk it is intended to protect you against, and the circumstances in which it will be refunded

It is recognised that care homes may have different business models and, depending on your own business model, it may be appropriate to give a potential resident who will pay for their own care and their representatives an average fee, as well as the range of weekly fees that you typically charge for different types of room and care.

### Getting it right

Here's a good example of how to present information about what services are (and are not) included in your weekly fees:

*The following items and services are included in and covered by your weekly fees:*

- *the costs of your personal care*
- *accommodation*
- *electricity (eg heat and light)*
- *food and drink, including snacks*
- *housekeeping and laundry undertaken on the premises (excepting articles requiring dry cleaning)*
- *television licence, inclusive for personal use*
- *occupational therapy*

*The following extra items and services are not covered by the weekly fees, but we can arrange for them to be provided to you at a cost. You shall be responsible for payment for extra items and services and we shall advise you of their cost beforehand. Our latest price guide is set out on our website, here [weblink to prices], in your service user guide and available at reception in your care home.*

- *professional hairdressing*
- *aromatherapy massage and reflexology*
- *personal copies of newspapers or magazines*
- *personal purchases such as stationery, confectionery, alcoholic beverages, particular snacks, soaps and toiletries*
- *clothing, shoes and slippers*

- *dry cleaning*
- *installation of private telephone line, internet or cable TV connections*

*In the absence of free provision by the NHS, the following may also be provided, but shall be charged in addition to the weekly fees:*

- *chiropody*
- *opticians*
- *dentistry*
- *physiotherapy*
- *other privately arranged healthcare*

*In the event that NHS staff, your representatives or relatives are unable to provide you with an escort to hospital appointments, we will apply a charge of £15 per hour for a member of staff to accompany you.*

## Deposits

A deposit is a sum of money that is intended to protect you against the risk of financial loss as a direct result of a resident's actions. Examples of possible financial loss scenarios include:

- if a resident in your home doesn't pay your fees
- if a resident causes damage to your property whilst in your home
- if a resident asks you to reserve a room for them but doesn't move into your home after signing the contract

Where you require a security deposit, you will need to explain:

- the purpose of the deposit and the risk that it is intended to protect you against
- how the deposit will be protected against the risk of your own insolvency - for example, whether it will be 'ring fenced' in a separate trust account or protected by insurance
- where and by whom the deposit will be held
- how and when the deposit will be refunded - for example, if a resident leaves your home or in the event of their death

Where you require a reservation deposit you will need to:

- explain its purpose and the risk that it is intended to protect you against - for example, the risk of a late cancellation by a resident after a contract has been signed
- explain whether it will give a resident an exclusive option on a room of their choice until they move in
- confirm that the reservation deposit will be credited towards their fees if they move in
- explain the circumstances of when the deposit (or any part of it) will or won't be refunded - for example, if the resident decides not to move in

You should provide a potential resident and their representatives with the full range of fees you typically charge, rather than just a 'fees start from' price list. For example: "For a single room, the weekly fee charged for self-funding residents is currently from £900 ranging to £1,000 per week", rather than just saying: "Fees start from £900 per week". The fee range must also accurately represent what you typically charge new residents - for example, if the minimum weekly fee shown is for a very small single room in your care home, it will be much lower than the rate charged for larger rooms, and this is likely to be misleading.

## **Unfair commercial practices and contract terms**

Consumer law protects consumers against unfair business practices and unfair contract terms, and safeguards consumer rights when buying goods or services. Here are some examples of potential breaches of consumer law to be aware of:

Unfair deposit terms: A contract term is likely to be considered unfair if it allows you to keep a resident's reservation deposit when they move into your home, instead of refunding or crediting it towards their fees.

A contract term is also likely to be unfair if it allows you to keep the resident's security deposit when the amount retained by your home is greater than any loss caused by the resident's default.

Advance payments: All mandatory charges should be included in your regular residential fees. The charging of upfront mandatory fees that are not genuine deposits or prepayments of fees is unlikely to be fair under consumer law.

Security deposits: The CMA considers that it is likely to be unfair to require residents to pay a security deposit where this is not properly protected against the risk of your own insolvency. Describing a sum as a security deposit when it is not kept separate from your operating funds may be misleading.

[\*\*< Introduction to 'Key information'\*\*](#)

[\*\*> Introduction to 'Important, additional information'\*\*](#)

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