

Adult social care Trade Associations meeting



13 June 2018

Welcome and introductions

Agenda



| No. | Agenda item | Lead | Time |
|-----|---|------------------------------------|-------|
| 1. | Welcome and introductions | Debbie Westhead | 10.00 |
| 2. | Minutes and actions from last meeting | Debbie Westhead Gabrielle Jones | 10.05 |
| 4. | Updates | Debbie Westhead | 10.10 |
| 5. | Issues raised by Trade Associations | Debbie Westhead | 10.20 |
| 6. | Trusted Assessor guidance | Dave James | 10.30 |
| 7. | CMA Care Homes for the Elderly draft consumer law advice | Mike Lambourne | 10.55 |
| 8. | AOB | Debbie Westhead | 11.25 |

Minutes and actions from last meeting

Updates

- The Driving Improvement report, published 7 June 2018, contains case studies from 9 adult social care providers who have significantly improved their ratings.
- The case studies were developed through conversations with a range of stakeholders, including managers, staff and people who use services and their families.
- Each case study ends with practical tips for improvement shared by the manager(s).
- The report has been heavily promoted on social media and a press release was issued.

- Since CQC was given the power to bring criminal prosecution against health and social care providers for failing to provide treatment in a safe way in April 2015 we have successfully prosecuted 9 providers relating to serious incidents.
- As a consequence of these prosecutions and the amount of data we have relating from its rating inspections where breaches occur more often we are beginning to notice a number of patterns emerging.
- This information can help us to identify further themes such as; medicines management, fire safety, equipment maintenance, window safety, falls and nutrition.

- With this in mind we plan to publish ‘learning from safety incidents’ updates on safety issues that have arisen from enforcement action in adult social care.
- It is hoped that by providing information on how to avoid serious incidents that would place people at harm CQC will encourage improvement in health and care services nationally.
- Five reports are planned to be released by the end of June.

Issues raised by trade associations

Trusted Assessor guidance

Simon Spoerer, Design Team Leader

- We have adapted our internal guidance on ‘Trusted Assessor’ schemes for use both internally and externally.
 - This is an NHS initiative designed to reduce discharge delayed and explains how Fundamental Standards requirements can be met by Trusted Assessor schemes.
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Formal, time bound agreements are required, setting out the following:

- Detailed arrangements
- Whether ‘out of hours’ discharges will occur
- How and when assessments and plans will be shared
- What will happen if an inappropriate discharge has occurred

Plans and assessments must provide the information providers need to meet legal requirements.

We would like your feedback:

- Is the guidance clear and understandable?
- If not, which parts are unclear and in what way?
- Do you have any other comments or suggestions in relation to the guidance?

CMA Care Homes for the Elderly draft consumer law advice

**Mike Lambourne, Assistant Project Director |
Competition and Markets Authority**

CMA consultation on draft consumer law advice for care homes

**Overview of draft advice, consultation &
next steps**

**Mike Lambourne, Assistant Project
Director**

About the consultation

https://www.gov.uk/government/news/cma-consults-on-draft-consumer-law-advice-for-care-h

News story

CMA consults on draft consumer law advice for care homes

The CMA is consulting on new advice to help care homes meet their consumer law obligations.

Published 31 May 2018

From: [Competition and Markets Authority](#)



It follows the Competition and Markets Authority's (CMA) year-long market study into the residential and nursing care home sector in the UK for people over 65. The study found that there is a risk of residents being treated unfairly and that some care homes may potentially be breaching consumer law.

Background

- **CMA carried out market study into care homes for the elderly in the UK** – final report published 30th November 2017, which identified **concerns** that some care homes may be treating residents unfairly and potentially breaching consumer law
- One of the actions CMA announced was that it would be consulting on comprehensive **advice** to help care homes meet their consumer law obligations (following strong support from within sector and consumer groups)
- Old **Office of Fair Trading guidance** on unfair terms in care homes contracts was withdrawn by CMA (consumer law & the sector have moved on considerably since 2003)
- CMA has already separately consulted on and published final advice on **charging fees after a resident's death**



Consumer law – why it matters to care homes

- Consumer law gives **important protections** to residents, alongside sector specific CQC regulations
- Complying with consumer law is **not optional**
 - care homes should **already** be complying with their obligations
 - care homes who infringe the law risk **enforcement action** by the CMA and Trading Standards Services, as well as action by other compliance partners and by residents themselves
 - following publication of the final advice we intend to carry out a follow-up **compliance review** to check progress made across the sector
- Government has **accepted** our market study recommendations to strengthen consumer protections – it shares the CMA’s objective to ‘**embed**’ consumer law compliance across the sector

Scope of draft advice

- Draft advice is intended for **care homes for people over 65**
- Consumer law is applicable to **all** care homes, irrespective of whether their residents are **self-funded** or **state-funded**. This includes **independent** (profit & not-for-profit) & **local authority** operated homes.
- Consumer law applies across **whole of UK** and sits alongside sector-specific obligations e.g. CQC regulations
- Draft advice sets out **CMA's views**, ultimately only a court can provide a definitive interpretation of the law

What does the draft advice cover?

- **Upfront information** – what information care homes should provide to prospective residents & their representatives, and when & how to do so
- **Treating residents fairly** – what care homes should do to ensure that their contract terms & way they treat residents & their representatives are fair
- **Quality of service** – complying with the obligation to provide services to residents with reasonable care & skill
- **Complaints handling** – what care homes should do to ensure their policies & procedures are easy to find, easy to use & fair

What are care homes obligations under consumer law?



Promotional, advertising and marketing activities

What care homes say must be truthful and accurate



Sales and pre-admission process before a resident moves in

Care homes must provide people with the information they need to make informed decisions



Services provided after the resident moves in

Care homes must:

1. Treat residents fairly when they are living in the home
2. Provide services with reasonable care & skill



How care homes enforce their terms and conditions

Using or enforcing a term in a contract with residents that is unfair (under unfair terms law) is also likely to be an unfair practice



Complaints handling

Care homes should have a written complaints handling procedure, which is easy to find, easy to understand and use, fair and effective

Some of the key issues we are seeking views on

- Do you agree with our views on the **key upfront information** that care homes should provide to prospective self-funded residents, and are the **ways** in which we have suggested it should be provided (e.g. websites, information packs) workable in practice?

✓ Illustrative example of how to provide indicative fee information

Indicative Prices/Weekly Fees Guide

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 pre-assessment and the type of room and services chosen.

Some of the key issues we are seeking views on

- Are our suggested approaches to giving residents greater **foreseeability of future fee increases (before they accept an offer of a place)** workable in practice? If there are drawbacks, what would be a better way to achieve compliance with the law?

a) **Fixing a resident's fees** for the duration of their stay;

b) specifying the **precise level and timing** of any future fee increases within very narrow limits, e.g. *'your fees will be increased by £500 per annum on the first and subsequent anniversaries of your arrival at the home'*;

c) reviewing residents' fees on an annual basis by reference to a relevant, objective and verifiable **published price index** e.g. *the Consumer Prices Index including housing costs (CPIH), or the average of (i) the percentage increase in the CPIH over the previous year and (ii) the percentage increase in the National Living Wage rate compared to the previous year.*

- Do you have suggestions on the best ways of disseminating the content of the final advice to ensure it is **accessible**, in particular to smaller care homes?

Next steps

- **Consultation runs for 6 weeks: 31 May – 12 July**
- Particularly keen to hear from **care homes** & their **representative bodies**
- **Responses submitted by post or email:** carehomesconsultation@cma.gsi.gov.uk
- Holding **stakeholder roundtable** at CMA offices on **29 June** (as well as in each of the Devolved Nations) - also happy to talk to you **bilaterally**
- Aim to publish final advice in **Autumn 2018**
- Follow up **compliance review** to check progress made across sector
- Happy to offer support to assist representatives bodies who want to develop **model contracts** for their members

Other ongoing CMA consumer protection work

- **We are taking targeted enforcement action against some care homes** (current focus is on unfairly charging large upfront fees, and charging fees for extended periods after a resident has died)
- **We are working with Department of Health & Social Care in England on follow-up to our market study recommendations:**

➔ **DHSC accepted our consumer protection recommendations (March 2018):**

‘Government want to take forward a package of immediate action to improve consumer protections in the sector. We are clear that where improvements are not seen, we will look to bring forward legislation...’

➔ We are feeding into development of **Green Paper** consultation in England on care & support for older people

➔ We are participating in **‘Good Choices in Care’** workshops e.g. transparent information on provider websites

AOB