

Trading fairly: changing your terms

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One area that is referred to in the 'grey list', is unilateral changes made to contracts (after a resident has become bound by the terms). It is important that your contracts are fair and balanced, and clearly set out what services a resident is entitled to and the circumstances where the terms of your contract may change. The clearer the terms of a contract are, the easier it will be for a potential resident, family member or representative to understand their rights once a resident moves in.

Terms that enable you to make changes after a contract has been signed are generally known as variation clauses.

What are variation clauses?

Your contract should clearly set out the specific circumstances in which your terms may be amended (which should be narrow) and give enough information for a potential resident and their representatives to foresee and understand what, when and how these changes may be made (before they accept an offer of a place). These terms are called 'variation clauses'. This will help them to make an informed decision about whether your care home is right for them.

Using terms that say things such as 'only reasonable changes will be made', are unlikely to be considered fair as they are too vague and give you too much discretion to make changes to the resident's detriment. They would also not help potential residents and their representatives to foresee what changes could be made and the impact these may have.

In summary, variation clauses should:

- be accurate and unambiguous
- set out the specific circumstances when your terms (or service) may be changed, such as making minor changes, changes that are necessary to give effect to new laws or changes that benefit residents - that is, valid reasons. Where the price to be paid under the contract may be changed, the variation should be linked to a relevant, objective and verifiable price index, so that it is clear that you cannot change the price arbitrarily
- be clear and transparent
- confirm that advance written notice will be given to residents and their representatives of any changes
- give a resident and their representatives enough time (that is, at least 28 days) for them to give notice and leave your home before the changes come into effect
- set out the rights of residents if they do not wish to accept the variation, which should include a

right to pro-rata refunds of any pre-payments for use of their room or services not yet provided, and a full refund of any deposit if they decide to move out before the variation takes effect

The narrower in scope and effect a variation clause is, the more likely it is to be fair.

Giving notice of a change and the right for a resident to end their contract without penalty before it takes effect is unlikely ever to be enough to offer sufficient protection in this sector. Residents are often reluctant to move homes, even when unhappy or dissatisfied, because of the stress and inconvenience involved, and the potential negative impact on their health.

For more Information

It is important that you ensure any variation terms within your contract comply with consumer law. To help you, there is an example of how to write a variation term available to download.

You are expected to comply with all current, relevant legislation and sector rules and regulations. Where your terms allow you to vary your terms or service because of your non-compliance with existing legislation, rules and regulations, this is unlikely to be considered fair under consumer law.

Major unexpected changes

Variation clauses should allow you to make only foreseeable changes, such as annual increases in fees in line with inflation or improvements in working practices. However, there may be exceptional circumstances that are outside your control when a major, unexpected change is required, which has not been foreseen, or has not been covered in the contract. In these situations, particularly where the change may reduce the resident's benefits or be disadvantageous to them, you should:

- give extensive notice to the resident and their representatives about the proposed change
- engage in meaningful consultation with the resident and their representatives
- get their consent to make the changes

Meaningful consultation means that you should give residents reasonable time to consider the proposed changes and listen to their views before making any final decisions. Merely telling a resident about the changes, or consulting with them when you have already made a decision, is unlikely to be meaningful. It is a good idea to explain clearly what the consultation process is and how any decisions will be made.

Getting it wrong

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

- *we reserve the right to make changes to our terms or service at any time by serving seven days' notice on you. Changes will take effect from the date of the notice.*
- *we shall have the right to vary these terms and conditions and/or any of our services or policies*

from time to time if, in our opinion, it is necessary or appropriate.

Getting it right

The following terms are more likely to be considered fair under consumer law:

- *you must observe the resident rules and regulations, which shall be made available for you to inspect in our home. We shall be entitled to make modifications to the resident rules and regulations to reflect new health and safety laws or sector regulations, or to improve the service that we supply to you. In all cases, we will consult with you and your representatives about proposed changes and give you six weeks' notice before any modification takes effect. If you object to any modifications you have the right to terminate this agreement without penalty.*

Terms that give you a lot of discretion or allow you to make changes at short notice (especially if the resident has no say) are likely to be considered unfair. These types of terms can cause an imbalance in the contract (that is, they can give you more rights than a resident) as they can be used to force residents to accept unexpected costs or a lower quality service, even if the term was not meant to be used in that way.

Residents should receive the service agreed and not something that is significantly different from what was agreed and set out in the contract.

Major unexpected changes are likely to require a fundamental change to a contract, and so should not be made without consultation with a resident and their representatives, and should only be made in exceptional circumstances and with their consent. If you change the terms of a contract without the resident's consent, you may have to pay damages to them for breaching the terms of your contract. You may also infringe other consumer law, such as the CPRs.

[< Trading fairly: an introduction](#)

[> Trading fairly: changing your fees for residents who fund their own care](#)

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