



CORPORATE AND COMMERCIAL

New Guidelines for Irish Care Home Operators

by **Marco Hickey, Richard Curran**

New Guidelines for Irish Care Home Operators

7th May 2019 | by Marco Hickey, Richard Curran

Following an 18 month review, the Competition and Consumer Protection Commission (CCPC) has published new consumer protection guidelines on contracts of care for elderly care homes in Ireland.

The guidelines aim to simplify contracts of care and make them fairer and more transparent by outlining the responsibilities that operators are required to adhere to under consumer protection law. The guidelines therefore codify the existing consumer rights enjoyed by all care home residents in Ireland. A copy of the guidelines is available [here](#).

Operators should review their existing contracts of care to ensure compliance with the guidelines. The CCPC has indicated that there will be a grace period (likely until around the end of 2019) to change any potentially unfair terms. The CCPC will then make an assessment of compliance at a later date.

In undertaking a review of existing contracts of care, operators should have regard to the guidelines' recommendations on how to approach key issues such as changes to service, variations to terms, additional fees and what happens upon death of a resident. At the same time, operators should note some of the main shortcomings in contracts of care which the CCPC identified in their review, including:

- allowing the operator to make significant changes without prior consultation;
- use of technical language that was not easily understood;
- limiting or restricting an operator's liability for incidents caused by its negligence; and
- not providing important information to residents (including around costs), which could have helped them formulate an informed decision about their care.

Whilst only the Irish courts can ultimately determine if a contract term is unfair, (i) the CCPC can apply for an injunction to stop a care home relying on a contractual term; and (ii) consumers can rely on the new guidelines in court to demonstrate the unfairness of a term so as to have it set aside.

In addition to the reputational damage of breaching the guidelines, such a failure would also likely have regulatory and economic impacts. From a regulatory perspective, it is likely that compliance will be folded into HIQA's ongoing quality assessment. From an economic angle, an operator who falls foul of the guidelines may have difficulty in recovering unpaid fees if it is shown that a contract term is unfair.

All operators should carefully review their existing contracts of care and, in good time, make appropriate amendments so as to ensure that these adhere with the guidelines.

For more information on the above or for general advice on this topic, please contact members of our [Healthcare team](#).

About the Authors



Marco Hickey
Partner

Marco is a highly experienced competition and M&A/corporate lawyer having practiced in both areas for many years.

T: + 353 1 637 1522 E: mhickey@lkshields.ie



Richard Curran
Managing Partner

Richard has extensive experience in corporate finance transactions.

T: + 353 1 637 1514 E: rcurran@lkshields.ie