CMA Launches Court Action Against Barchester

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Coronavirus has dominated the news in recent weeks and seems to also be dominating the lives of many of us – especially those in the health and social care sector who are on the front line.

However, whilst care providers have been busy implementing protocols and measures to protect the vulnerable in their care, the Competition and Markets Authority (CMA) has launched court action against Barchester Healthcare due to its concerns over the group's contractual arrangements.

The CMA previously sent a letter before action to Barchester on 25 July 2019, after a period of consultation in relation to its concerns around administration fees and post-death fees.

The CMA believes Barchester was breaking consumer protection law by requiring a substantial non-refundable upfront administration fee from residents for which they received no services or products in return. It also believes that the company's description of the charge, and what it was for, was misleading and that residents were told about the fee too late in the admission process. In relation to fees charged following a resident's death, the CMA believes that Barchester was breaking consumer protection law by charging the fee for a period longer than outlined in the CMA's guidance.

Although Barchester had stopped charging an administration fee in January 2019, it had not provided the CMA with satisfactory undertakings, including provision for financial redress for consumers in relation to the administration fee. The letter before action threatened to issue legal proceedings against Barchester for breaches of the Consumer Rights Act 2015 and the Consumer Protection from Unfair Trading Regulations 2008. The CMA can also seek enhanced consumer measures including financial redress for consumers.

On 24 March 2020, the CMA confirmed that it had issued court proceedings against Barchester on the basis, it says, of Barchester's failure to address the concerns set out in the letter before action.

This would no doubt be unwelcome news for Barchester at any time, but it would appear that this may be particularly bad timing in view of the current challenges across the sector.

This action follows legal proceedings issued by the CMA against Care UK in February 2019, also on the basis of upfront administration fees which Care UK had charged. Similarly, Care UK had also stopped charging such fees

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but has not refunded fees already paid and the CMA is now seeking a court order to secure refunds for over 1,600 residents, some of whom have been charged as much as £3,000, and to stop Care UK from charging similar fees again in the future. That case is currently due to be heard by the High Court in July 2020.

Suffice to say, if ordered to repay the administration fees collected, both Care UK and Barchester will be facing substantial financial payouts.

It is clear that the CMA is continuing to take a close interest in the sector and that it appears committed to enforcing compliance with its guidance. It is therefore important that all providers have reviewed their resident contracts and their admission processes and website, and made amendments where necessary to comply with the CMA guidance.

If you require any advice about the requirements or assistance with reviewing or updating your contracts, our healthcare solicitors can help. Contact us on 01202 786135, or email online.enquiries@la-law.com to discuss how we can help you.

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