

CARE COMPLIANCE FACTSHEET

Employment Law in Care

Practical answers to real HR scenarios for care providers



Extended sickness during probation can we dismiss?

Scenario: Long sickness absence while still in probation.

What the law cares about: Cause of sickness (potential disability under Equality Act 2010), risk of disability discrimination, need to evidence fair process even for short-service staff.

What good looks like:



1. **Ascertain cause** (ask, OH referral, GP fit notes). Flag any potential disability or pregnancy-related absence.
2. If disability **may** apply → follow medical capability route: OH evidence, reasonable adjustments, review meetings.
3. If no protected factor → you can use short-service dismissal but investigate and record rationale (notes/minutes).
4. Always follow a **scaled process** (invite, meeting, confirm decision, right of appeal) per ACAS.
5. Record the distinction between **conduct/capability** and any protected characteristic.

Update your docs: Sickness & capability policy, probation policy, equality policy, letter templates (invite/outcome/appeal).

References give little info – how to test integrity/good character?



Scenario: Sparse references; need to judge suitability.

What the law cares about: Safe recruitment; documenting how you assessed risk.



What good looks like:

- Adopt a **Safe/Values-Based Recruitment Policy** covering: structured interviews; scenario questions; values scoring; right-to-work; **DBS** (enhanced where required); gaps-in-CV probes; minimum two refs (incl. last employer) or rationale if not available.
- Use **behavioural questions** ("Tell me about a time...") and **safeguarding hypotheticals**.
- Record why you hired/not hired.

Update your docs: Recruitment policy, interview guide & scorecards, reference checklist, DBS/referral flowchart.



Agency/sponsored workers – compliance risks



Scenario: Using a third-party agency or Certificate of Sponsorship (CoS).

What the law cares about: You own the due diligence (don't rely solely on the agency); equality/discrimination risk; guaranteed hours for CoS; record-keeping.

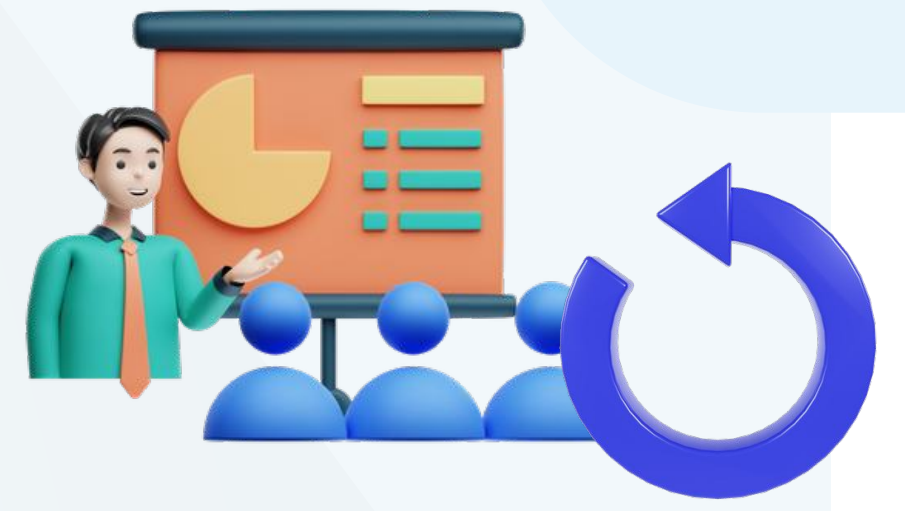
What good looks like:

- **Verify directly:** ID, right-to-work, your own DBS, training/competence, references.
- **Business plan before sponsorship:** workload forecast; guaranteed hours; contingency if demand drops.
- Avoid detriment to sponsored workers (hours/termination) that could be framed as discrimination – document objective reasons.

Update your docs: Agency worker procedure; sponsorship/compliance checklist; onboarding pack for agency/CoS workers.



Zero-hour staff who trained elsewhere – must we retrain?



Short answer: Yes, usually.

What the law cares about: Your legal duty to train for the tasks they'll perform.

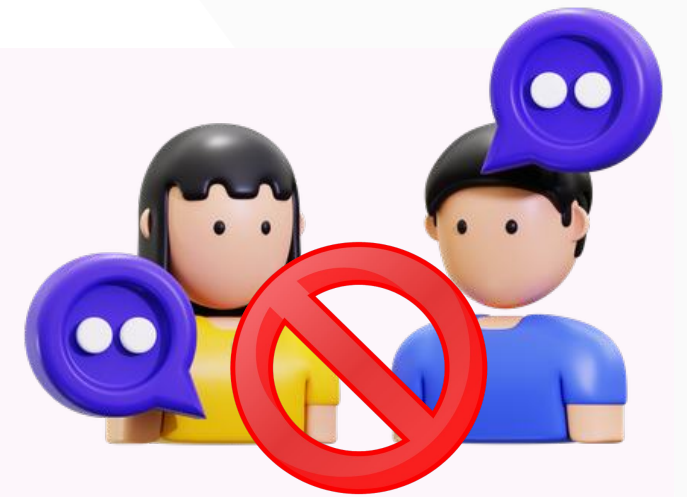
What good looks like:

- Ask for certificates and level/awarding body (ROSPA/CPD etc.).
- If uncertain or outdated → deliver your training to your standard; plan annual refreshers or on change.

Update your docs: Training matrix, induction policy, refresher cycle.



Restricting non-English at work – is a language policy lawful?



What the law cares about: Race is a protected characteristic; policy must pursue a legitimate aim and be proportionate. Break times restrictions are high risk.

What good looks like:

- Only restrict where **necessary** (e.g., safety, safeguarding, bullying/harassment prevention, clear resident communication).
- **Never** police language on breaks; provide justification if restricting during resident interactions/team handovers.
- Train managers on respectful enforcement; equality impact assessment.

Update your docs: Communication/language policy, equality policy, manager guidance & training notes.



“That’s not my job” – carers refusing cleaning tasks



What the law cares about: Contractual duties; clarity of role; fair discipline.

What good looks like:

- Ensure contract/job description lists core duties and includes "not exhaustive" clause and occasional related tasks.
- Provide relevant training (e.g., COSHH, infection control).
- If refusal persists → manage as conduct/insubordination with a staged process.

Update your docs: Contracts, job descriptions, conduct policy (reasonable management instruction), training records.



Staff social media – posts with residents (incl. dementia)



What the law cares about: Consent, dignity, reputation, safeguarding.

What good looks like:

- Robust Social Media Policy: no images/audio/video of residents without explicit, informed consent (or best-interest decision with LPA/IMCA involvement); no posting on shift; professional conduct off-duty.
- Define sanctions up to gross misconduct; specify approval routes for any marketing content.
- Educate on unintended disclosures (background items, locations, meds trays).

Update your docs: Social media & confidentiality policy, consent procedure, marketing consent forms.



Refusing to drive in bad weather – what's fair?



What the law cares about: Health & safety, Corporate Manslaughter risk, fairness/consistency.

What good looks like:

- **Adverse Weather/Occupational Driving Policy:** how to report; who decides; paid vs unpaid; acceptable evidence (photos/video, travel disruptions).
- Consider alternatives: public transport, re-rostering, paid annual leave.
- Expect staff to keep vehicles roadworthy; false claims → conduct route.

Update your docs: H&S policy, adverse weather SOP, driving for work procedure.



Falsified medication records (e.g., MAR) – response



What the law cares about: Safeguarding; medication safety; fair process.

What good looks like:

- Treat as potential gross misconduct.
- Follow ACAS steps: investigate (BHS v Burchell test), invite, allow accompaniment, hearing, written outcome, appeal.
- Consider mitigation (long service, error vs intent) → outcome may range from final written warning to dismissal.

Update your docs: Medicines policy (error vs falsification), conduct policy (examples), investigation templates.



What should we audit monthly?

Reality: It varies by service risks; focus on client and staff safety.

Examples (adapt set to your risks): care plans & records; MAR charts; falls/pressure ulcer reviews; bed rails; kitchen/food safety; fire alarms/drills; incident/accident logs; training/competence; supervision/appraisals; lone working; occupational driving.



Don't forget staff-side H&S: policy suite, risk assessments, training evidence, equipment checks, reporting lines.

Update your docs: Monthly audit calendar, checklists, responsibility matrix, evidence logs ("who did what, when").



Pay rises & NI changes – implementing without chaos



What the law cares about: Statutory minima compliance; consultation for contractual changes; retention risk.

What good looks like:

- Build a costed plan early (scenario models).
- Consider non-pay levers: time-off-in-lieu vs overtime, rota efficiency, benefits/perks, shift patterns.
- If reducing above-statutory pay, run a consultation with impact analysis; expect some attrition risk.

Update your docs: Pay policy, overtime/TOIL policy, consultation packs, benefits summary.



Second jobs & safe hours

What the law cares about: Working Time Regulations (WTR); employer duty to ensure safe limits.



What good looks like:

- **Secondary Employment Declaration** on start and whenever it changes.
- Track hours (clock in/out or e-rostering).
- Adjust shifts to maintain WTR limits; clear overtime approval rules.

Update your docs: WTR policy, secondary employment form, rostering SOP, overtime policy.



Staff falling asleep on shifts (domiciliary/live-in)

What the law cares about: Safeguarding and risk to life.

What good looks like:

- **Safeguarding procedure** that sets checks (hourly/two-hourly tasks/updates) and logging (e-system or controlled WhatsApp).
- Define misconduct thresholds based on severity/outcomes.



Update your docs: Safeguarding policy, night-time/awake duties SOP, conduct policy.



Recurring last-minute sickness (e.g., around social events)

What the law cares about: Cause of absence (Equality Act risk), fairness, consistency.



What good looks like:

- Diagnose the cause first; beware blunt tools like the Bradford Factor without context.
- Define reporting rules (who, when, phone call not text), set triggers (e.g., X occasions in Y months → formal review).
- If evidence shows manufactured absence → conduct route (social media may support if policy allows monitoring).

Update your docs: Sickness & absence policy (clear triggers), social media policy, investigation checklist.

One-page actions to complete this week



- ✓ Map gaps against the **Update your docs** bullets above.
- ✓ Create/refresh: **Adverse Weather, Secondary Employment, Social Media, Language/Communication, Night-check SOP, Recruitment/Onboarding.**
- ✓ Build a **12-month audit calendar** with named owners and evidence logs.
- ✓ Set a **training refresh matrix** (what, who, when, assessor competence).
- ✓ Set templated **letters** (invite/outcome/appeal) for capability & conduct.



Save & standardise (templates you may want next)

- ✓ Interview scorecards & safeguarding scenarios
- ✓ Secondary employment declaration form
- ✓ Adverse weather reporting form
- ✓ Social media consent forms & marketing approvals
- ✓ Night-check log (hourly)
- ✓ Investigation & hearing packs (ACAS-aligned)



Need a version to share with your team?

Ask for the editable Word/Google Doc pack and we'll prep it in your brand style.

