

# Consultation Response

## Competition and Markets Authority – UK care home providers for the elderly – draft consumer law advice on the charging of fees after death

January 2018.

Ref. 0818

All rights reserved. Third parties may only reproduce this paper or parts of it for academic, educational or research purposes or where the prior consent of Age UK has been obtained for influencing or developing policy and practice.

Name: Joel Lewis  
Email: [joel.lewis@ageuk.org.uk](mailto:joel.lewis@ageuk.org.uk)

Age UK  
Tavis House  
1-6 Tavistock Square  
London WC1H 9NA  
T 0800 169 80 80 F 020 3033 1000  
E [healthinfluencing@ageuk.org.uk](mailto:healthinfluencing@ageuk.org.uk)  
[www.ageuk.org.uk](http://www.ageuk.org.uk)

Age UK is a charitable company limited by guarantee and registered in England (registered charity number 1128267 and registered company number 6825798). The registered address is Tavis House 1-6 Tavistock Square, London WC1H 9NA.

## **About this consultation**

The Competition and Markets Authority (CMA) is consulting on draft advice for providers of care homes and nursing home services to the over 65s in the UK (referred to in this document as 'care home providers'). This is primarily in relation to the charging of fees following the death of a long-term resident, in particular: (a) residential fees (for care or accommodation or both) payable after the death of a self-funded or part-funded resident; and (b) fees payable to cover 'shortfalls' in any contributions which are no longer paid by the state on (or shortly after) the death of a resident.

## **Key points and recommendations**

### **Introduction**

Age UK is the country's largest charity dedicated to helping everyone make the most of later life. The Age UK network comprises of around 150 local Age UKs reaching most of England. Each year we provide Information and Advice to around 5 million people through web based and written materials and individual enquiries by telephone, letters, emails and face to face sessions. We work closely with Age Cymru, Age NI and Age Scotland. Local Age UKs are active in supporting and advising older people and their families in the care market.

We welcome the opportunity to respond to the Competition and Markets Authority's Consultation.

### **Consultation Questions**

**4.1 Does this draft advice cover all the relevant practices related to the charging of fees and handling of possessions after a resident has died? If not, what else should this advice include?**

**4.2 At paragraphs 2.5 to 2.14, in the context of determining the length of the period (if any) that fees can fairly be sought after the resident's death, we describe the legitimate interests of the resident/their representatives (e.g. a reasonable time for the resident's family to clear the resident's room) as well as those of the care home (e.g. including terms in the residential care agreement which ensure swift recovery of the room).**

**In this context: (a) Do you agree that the draft advice has taken into account considerations which are relevant? If you think that some or all of the considerations taken into account are not relevant, please explain your reasoning, with any supporting evidence.**

**(b) Are there other considerations, which you consider are relevant, which we have not taken into account (either explicitly – see for instance paragraph 2.7- or by omission)? If you consider there are further relevant considerations, please provide details, with any supporting evidence.**

**4.3 In relation to the proposed three days' period for which payment of fees may be fairly permitted following the resident's death and therefore, during which, the resident's family will have continuing access to the resident's room, (see paragraph 2.9 onwards):**

**(a) Do you agree that three days is likely to usually be a reasonable period for the resident's family to have access to the resident's room following their death, given for example their difficult circumstances and the need to remove possessions from the resident's room?**

Age UK agrees that a maximum of three day is a reasonable period for fees to be charged after the death of a care home resident. Age UK would also recommend that the deceased's estate cease to be charged for the room if it is re-occupied within the three day period.

The CMA's evidence gathering on the practices of care providers makes it clear that is commercially feasible for them to charge for no more than three days following the death of a resident. Providers can use this defined period to factor in any potential loss of occupancy revenues into their financial modelling. Care contracts across the United Kingdom should be equitable with the Scottish National Care Home Contract and stipulate a maximum three day charge following the death of a resident. Surveying by the CMA with information from 32 of the UK's largest care home providers, indicated that 15 of them charge no fee, or charge no fee once the room is cleared of possessions, or only charge fees for three days and charge for periods ranging from five to seven days. Likewise, 69 out of 120 care home providers who responded to a CMA online survey said that they do not charge fees following the death of a self-funded resident, only charge for a period of up to three days, or only charge fees until the room is cleared of possessions. This demonstrates that charging for a maximum of three days is already a common practice across the industry and one that should be standardised across the whole sector.

Residents, their families, beneficiaries and any third-party individual that pays 'top-ups' should expect to receive the same contractual terms as the local authority, NHS or other body in relation to the charging of fees after the death of a resident. As the CMA have noted, this is a matter of equality and fairness under the law and there is no valid reason for an estate to be charged for a service that can no longer be used.

As noted by the CMA, care homes should not pass on costs of preparing a room for the next resident. The CMA also correctly states that in practice, rooms in residential accommodation are paid for in advance, so payment following the three days after death, or when the room is re-occupied, should be refunded to the estate of the deceased resident. Again as noted by the CMA, refunds in this instance should be timely.

**(b) If you consider the three days' period is too short or too long for the resident's representatives to pay fees and/or have access to the resident's room following the resident's death, please explain why and put forward your suggestion for what period would be more appropriate for the sector along with the supporting evidence for your suggestion;**

**(c) Please also set out at what rate you consider it would be reasonable for the resident's estate to continue paying for this period of ongoing access to the room, with supporting reasons and information.**

Charges following the death of a resident should be equitable with those paid by the local authority, NHS or other third party.

**4.4 Of the three example terms, as set out in the table in paragraph 2.32:**

**(a) Are there any which you consider would not be workable based on your experience? Please give your reasons and any supporting information.**

**(b) Please provide us with any concerns or comments that you have on these illustrative terms.**

**4.5 As referred to at paragraph 2.14, a further approach which may also be acceptable could be for fees to be payable for the shorter of the following two periods: a) until possessions have been taken out of the room by the resident's representatives or b) a period (a "stop date") which could be 7 or 10 days after death. (a) Would this type of obligation be workable in practice based on your experience? Please give your reasons and any supporting information.**

In relation to storage of the deceased resident's possessions, contracts should clearly set out what reasonable charges the estate would be charged if family members were not able to collect possessions within the three day period. The provider should be clear, up front and transparent about what any 'reasonable costs' for moving possessions, their storage and any small fees needed to cover admin or indemnities might be. The provider should not seek to profit from the removal and storage of possessions or seek to make up any reduction in fees from the room being unoccupied. Reasonable costs should never amount to the cost of the room itself. However, contracts should also not incentivise families to use the provider as a means of cheap storage and they should seek to remove belongings in a timely manner. The collection of belongings like the residential contract itself is a partnership and show of good faith between residents, families and care homes and all sides should take reasonable steps in this instance to support one another. Contracts should be clear and up front, providers supportive during and residents and their families should have appropriate means of address if they wish to challenge any decisions.

Age UK does not support the term that permits the home, for a short further period, to continue charging for the room while the resident's possessions remain in place (see paragraph 2.13). We believe this may create potential inconsistencies and confusion in what qualifies as a short period of time, unless this period is defined and reasonable.

**(b) What would be a reasonable "stop date" period in these circumstances? Please give your reasons and any supporting information.**

**4.6 Are there any circumstances in which it would be impossible or disproportionate for the home to store or attempt to sell items that have not been cleared?**

**4.7 Do you have any other comments about this draft advice or the supporting Appendix B attached to this consultation document?**

